155-688

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 649.

THE POSTAL TELEGRAPH CABLE COMPANY, PLAINTIFF IN ERROR,

vs.

WIRT ADAMS, REVENUE AGENT OF THE STATE OF MISSISSIPPI.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

FILED FEBRUARY 23, 1894.

(15,515.)

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1 POSTAL TELEGRAPH CABLE CO. }
v. } No. 7519.
WIRT ADAMS, Rev. Ag't, &c. }

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Mississippi, Greeting:

Whereas in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity in the said State of Mississippi in which a decision can be had in the said suit between Wirt Adams, revenue agent of the State of Mississippi, plaintiff, and The Postal Telegraph Cable Company, defendant, wherein was drawn in question the validity of a statute of the said State of Mississippi on the ground of its being repugnant to the Constitution of the United States and the decision was in favor of its validity, a manifest error hath happened, to the great damage of the said The Postal Telegraph Cable Company, as by its said complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment therein be given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the 1st day of March, A. D. 1894, in the said Supreme Court to be then and there held, that, the record of proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice
[SEAL.] of the said Supreme Court, this 1st day of February, in the year of our Lord 1894.

L. B. MOSELEY,
Clerk of the Circuit Court of the United States
for the District of Mississippi.

Allowed by—
J. A. P. CAMPBELL,
Chief Justice of the Supreme Court
of the State of Miss.

Endorsed: Supreme Court of the United States. The Postal Telegraph Cable Company, plaintiff in error, *vs.* Wirt Adams, revenue agent of the State of Mississippi, defendant in error. Writ of error. Filed Feb'y 1, 1894. Oliver Clifton, clerk, by C. C. Campbell, D. C.

UNITED STATES OF AMERICA, *ss:*

To Wirt Adams, revenue agent of the State of Mississippi, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, D. C., on the 1st day of March, 1894, pursuant to the writ of error filed in the clerk's office of the supreme court of the State of Mississippi, wherein The Postal Telegraph Cable Company is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 1st day of February, 1894.

J. A. P. CAMPBELL,

Chief Justice of the Supreme Court of the State of Mississippi.

We hereby acknowledge service of the above notice and waive copy this the 1st day of February, 1894.

WILLIAMSON & POTTER,

Att'ys for Wirt Adams, State Rec. Agt.

2 Endorsed: In the Supreme Court of the United States. The Postal Telegraph Cable Co., plaintiff in error, *vs.* Wirt Adams, revenue agent of the State of Mississippi, defendant in error. Citation. Mordecai & Gadsden, R. S. Guernsey, Brame & Alexander, attorneys — plaintiff in error. Filed Feb'y 1, 1894. Oliver Clifton, clerk, by C. C. Campbell, D. C.

UNITED STATES OF AMERICA, *ss:*

To Wirt Adams, revenue agent of the State of Mississippi, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, D. C., on the 1st day of March, 1894, pursuant to the writ of error filed in the clerk's office of the supreme court of the State of Mississippi, wherein The Postal Telegraph Cable Company is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 1st day of February, 1894.

J. A. P. CAMPBELL,

Chief Justice of the Supreme Court of the State of Mississippi.

We hereby acknowledge service of the above notice and waive copy this the 1st day of Feb., 1894.

WILLIAMSON & POTTER,

Att'ys for Wirt Adams, State Rec. Agt.

[Endorsed:] In the Supreme Court of the United States. The Postal Telegraph Cable Co., plaintiff in error, *vs.* Wirt Adams, revenue agent of the State of Mississippi, defendant in error. Filed, Feb'y 1, 1894. Oliver Clifton, clerk, by C. C. Campbell, D. C. Citation. Mordecai and Gadsden, R. S. Guernsey, Brame and Alexander, attorneys — plaintiff in error.

3 Supreme Court of Mississippi, October Term, A. D. 1893.

Pleas and proceedings had and done at a regular term of the supreme court of Mississippi, begun and held in the court-room, in the capitol, in the city of Jackson, on the second Monday, the 9th day, of October, in the year of our Lord one thousand eight hundred and ninety-three.

Present: The Honorable J. A. P. Campbell, chief justice, and the Honorable Tim. E. Cooper and the Honorable Thomas H. Woods, associate justices; also Oliver Clifton, clerk of said court, in person and by his deputy, C. C. Campbell; James A. Smith, marshal, and Robert McAlpin, Jr., porter.

Theretofore there was filed in said supreme court a transcript on the 7th day of October, 1893, in words and figures following, to wit:

Pleas and proceedings had and done at a regular term of the circuit court, first district of Hinds county and State of Mississippi, begun and held in and for said county and State, in the court-room of said court, in the city of Jackson, on the 2nd Monday of July, 1893, being the 10th day of July, A. D. 1893.

Present: The Honorable J. B. Chrisman, presiding judge of the seventh circuit court, judicial district of said State of Mississippi; Hon. S. S. Hudson, district attorney of said dist.; R. J. Harding, sheriff of said county, and F. B. Neal, clerk of said court.

Be it remembered that heretofore, to wit, on the 16th day of August, 1892, there was filed in the clerk's office of said court a certain declaration, which is in the words and figures following:

Declaration.

STATE OF MISSISSIPPI, }
1st District, County of Hinds. }

In the Circuit Court of said County and Dist., January Term, 1893.

Wirt Adams, revenue agent, for the use of the State of Mississippi and the following counties contained therein, to wit, Amite, Benton, Claiborne, De Soto, Hinds, Franklin, Jefferson, Lauderdale, Lee, Marshall, Monroe, Newton, Pontotoc, Rankin, Scott, Union, Warren, and Wilkinson, plaintiff, against The Postal Telegraph Cable Company *et al.*, defendants.

Comes the plaintiff, Wirt Adams, revenue agent, for the use of the

State of Mississippi and the counties heretofore and hereafter named and specified, by attorneys, and complains of The Postal Telegraph Cable Company, a corporation duly organized and chartered under the laws of the State of New York, and R. J. Harding, sheriff and tax-collector of Hinds county for the years 1890 and 1891, and H. Casper, tax-assessor for said county for said years, defendants, in an action in assumpsit.

1st. For that whereas heretofore, on the 4th day of April, 1892, plaintiff was duly appointed, qualified, commissioned, and entered upon the discharge of his duties as revenue agent of the State of Mississippi; that the Postal Telegraph Cable Company on the first day of January, 1890, and has continually since that time to the beginning of this suit, owned and operated for pay its telegraph line and did a general telegraph business in the State of Mississippi, to wit, along or near the line of the Kansas City and Birmingham railroad it owned and operated one hundred and forty-two & $\frac{82}{100}$ miles of wire, and along and near the line of the Louisville, New Orleans and Texas railroad it owned and operated one hundred and five miles of wire, and along or near the Alabama & Vicksburg railroad it owned and operated one hundred and forty-three & $\frac{32}{100}$ miles of wire, being in the aggregate three hundred and ninety-one & $\frac{25}{100}$ miles of wire and other necessary material along the line owned and operated by said telegraph company within the State of Mississippi and from points from within to other points in the State of Mississippi.

4 That under and by virtue of an act of the legislature of the State of Mississippi approved March the 8th, 1888, being entitled "An act to amend section 557 and 585, Code of 1880, so as increase the public revenue and provided for the faithful collection of the same," there was levied a tax "on each telegraph company operating 1,000 miles or more, which shall be in lieu of other State, county, and municipal taxes, $3,000.00," and "on each telegraph company operating less than 1,000 miles of wire, for each mile, $1.00."

That said telegraph company so owning and operating its telegraph line (being less than 1,000 miles) during the year 1890 was under the duty and required by law first to pay a privilege-tax license of one dollar for each mile of its telegraph line operated within said State for the privilege of doing its telegraph business for a period of twelve months, the same amounting to the sum of three hundred and ninety-one & $\frac{25}{100}$ dollars, and for the year 1891 was under a like duty and bound by law to pay a privilege-tax license as aforesaid under conditions aforesaid, said tax for the year 1891 amounting to a like sum of three hundred and ninety-one & $\frac{25}{100}$ dollars, said tax for the said years amounting in the aggregate to the sum of seven hundred eighty-two & $\frac{50}{100}$ dollars.

That said defendant company, so becoming and being indebted to the State for its taxes aforesaid, has hitherto failed and refused and still fails and refuses to pay said tax or any sum or amount whatsoever, and so has wholly escaped taxation since its entrance into

the State of Mississippi; that plaintiff has proper assessment made and has given full and proper notice as the law directs.

And plaintiff further says that it was the duty of R. J. Harding, sheriff and tax-collector as aforesaid, to levy and collect from said telegraph company and pay over to the proper authorities said $8782.56 due as privilege tax for the years 1890 and 1891; that said sheriff and collector as aforesaid failed and neglected to levy or collect said taxes due as aforesaid. Wherefore and whereby he became liable to pay the amount of compensation due plaintiff under the law by reason of this action, to wit, $250.00.

Wherefore, under and by virtue of chapter 125 of the Annotated Code of 1892, entitled "State revenue agent," an action has accrued to plaintiff to demand and recover said sums of moneys due for taxes, together with all damages and penalties accrued or to accrue under this action.

2nd. And plaintiff further avers that the Postal Telegraph Cable Company on the 1st day of January, 1890, and has continually since that time to the beginning of this suit, owned within the State of Mississippi property of the value of forty-one thousand nine hundred and sixty-seven & $^{5}/_{100}$ dollars, the same being its telegraph line as equipped and operated, running through and being located in the counties of Amite, Benton, Claiborne, De Soto, Hinds, Franklin, Jefferson, Lauderdale, Lee, Marshall, Monroe, Newton, Pontotoc, Rankin, Scott, Union, Warren, and Wilkinson; that said telegraph company so owning the property aforesaid was under the duty and bound by law on or before the 15th day of December, 1890, and on or before the 15th day of December, 1891, to pay an ad valorem tax to each of the counties aforesaid and in the following sums—that is to say, of county tax:

To the county of Amite	847	48
" " " " Benton	15	51
" " " " Claiborne	38	97
" " " " De Soto	14	31
" " " " Hinds	87	28
" " " " Franklin	14	28
" " " " Jefferson	43	16
" " " " Lauderdale	72	27
" " " " Lee	46	69
" " " " Marshall	53	89
To the county of Monroe	100	98
To the county of Newton	83	84
" " " " Pontotoc	3	15
To the county of Rankin	65	81
" " " " Scott	58	24
" " " " Union	64	70
" " " " Warren	81	96
" " " " Wilkinson		90

being in the aggregate the sum of eight hundred and seventy-eight and $^{4}/_{100}$ dollars due by said defendant company to the counties aforesaid for taxes for the years 1890 & 1891, and that said

telegraph company so owning the property aforesaid was under the further duty and bound under the law, on or before the 15th day of December, 1890, and on or before the 15th day of December, 1891, to pay an ad valorem tax for said years to the State of Mississippi on its said property contained therein, as the law directs, said taxes so due the State for said years being the sum of three hundred and ten & $\frac{75}{100}$ dollars, the aggregate amount of ad valorem tax, both State and county, being the sum of eleven hundred and eighty-eight & $\frac{50}{100}$ dollars; all of which is more fully set out and shown by Exhibit "A" hereto, which is filed and asked to be considered a part of this declaration. All of said taxes were duly levied and plaintiff has had proper assessment made and given full notice to said defendant company, as the law directs, and plaintiff says that it was the duty of H. Casper, assessor as aforesaid, under the law to assess the said property or so much thereof as was located in his said county for said years, and that it was the duty of R. J. Harding, sheriff and tax-collector as aforesaid, to collect from said defendant company and pay into the State treasury all State taxes due on so much of said property as was located in Hinds county for the years 1890 and 1891, and to further collect and pay into the treasury of Hinds county all taxes due her from said company for said years; that said assessor and said sheriff and tax-collector failed and neglected to make said assessment, or to collect said taxes due, or to make any assessment of the property of said defendant company, or to collect any part of the taxes due.

Wherefore and whereby they became liable for the amount of compensation due plaintiff under the law by reason of this action, to wit, $250.00.

That under and by virtue of chapter 125 of the Annotated Code of 1892, entitled "State revenue agent," an action has accrued to plaintiff to demand and recover said sums of money, being the said taxes on said property of defendant company and all penalties and damages due by reason of said failures and neglects; that though said taxes are long since due, and though plaintiff has requested payment of the same, yet so to do the defendant company has hitherto failed and refused and still fails and refuses, to the damage of plaintiff in the sum of eighteen hundred dollars; wherefore he brings this suit.

WIRT ADAMS,
Revenue Agent of the State of Mississippi.
By WILLIAMSON & POTTER, *Attorneys.*

EXHIBIT "A" TO DECLARATION.

The Atlantic Postal & Telegraph & Cable Co. to State & County Taxes, 1890 & 1891, Dr.

Valuation, $41,967.54.

Counties.	Valuation.	State.	County.	Total.
Amite	$2,322 00	17 40	47 58	
Benton	780 00	5 85	15 51	
Claiborne	2,160 00	16 20	38 97	
De Soto	855 50	7 16	14 31	
Hinds	3,886 00	29 46	87 28	
Franklin	2,160 00	16 20	44 28	
Jefferson	2,106 00	15 79	43 16	
Lauderdale	4,604 00	34 97	72 27	
Lee	2,223 00	16 67	46 60	
Marshall	2,730 00	20 47	53 89	
Monroe	3,042 00	22 50	100 98	
Newton	2,592 00	19 43	58 84	
Pontotoc	117 00	86	3 15	
Rankin	3,564 00	26 72	65 84	
Scott	2,592 00	19 43	58 24	
Union	2,628 00	15 18	64 70	
Warren	3,416 04	25 61	81 96	
Wilkinson	504 00	37	00	
	$41,967 54	$310 07	$878 49	$1,188 56

State tax for '90 & '91	310 07
County " " "	878 49
Total State & county tax	$1,188 56

Endorsed: Filed & summons issued Aug. 16th, 1892. F. B. Neal, clerk, by W. J. Brown, Jr., D. C.

Summons.

State of Mississippi to the coroner and ranger of Hinds county, Greeting:

We command you hereby that you summon The Postal Telegraph Cable Company, R. J. Harding, sheriff of Hinds county, and H. Casper, late assessor of Hinds county, defendants, if to be found in your county, so that they be before the circuit court to be holden in and for the 1st district of said county, at the court-house thereof, in the city of Jackson, on the 2nd Monday of January, 1893, to answer the declaration of Wirt Adams, revenue agent of the State of Mississippi, plaintiff, against the said defendants, now on file in the clerk's office of said court; and have then and there this summons.

Witness the Hon. J. B. Chrisman, judge of the seventh judicial district of said State, the 1st Monday of June, 1892, and seal of said court. Issued the 24th day of October, 1892.

F. B. NEAL, *Clerk*,
By W. J. BROWN, JR., *D. C.*

The declaration on file is founded on the failure of said Postal Telegraph Co. to pay and the said H. Casper and R. J. Harding assess and collect from said company a privilege tax for the years 1890 and 1891. The amount actually demanded in this suit is the sum stated in said declaration and lawful interest and costs.

Judgment will be demanded at return term.

WILLIAMSON & POTTER, *P. Q.*

Declaration filed when summons issued.

F. B. NEAL, *Clerk.*

Attest: By W. J. BROWN, Jr., *D. C.*

Received at office Oct. 25th, 1892. Executed personally upon H. Casper Oct. 25th, 1892.

J. W. BEAL,
Cor. & Ranger.

Executed personally and by copy upon R. J. Harding, sheriff, and upon Mr. Jones, manager of the Postal Telegraph & Cable Company.

J. W. BEAL, *Coroner.*

7

Plea of Harding & Casper.

WIRT ADAMS, Revenue Agent, }
vs.
THE POSTAL CABLE TELEGRAPH COMPANY. }

Now comes defendants R. J. Harding and H. Casper and for plea to the declaration in above-styled cause say that the failure of said telegraph company to pay its taxes, as charged in the declaration, was not caused by any wilful neglect or default on their part; and of this they put themselves upon the country.

H. CASPER.
R. J. HARDING.

Endorsed: Filed Jan. 9, '93. F. B. Neal, clerk.

Petition to Remove Suit to U. S. Court.

STATE OF MISSISSIPPI, }
First District of Hinds County, }

Circuit Court.

WIRT ADAMS, Revenue Agent of the State of Mississippi, Plaintiff, }
against
POSTAL TELEGRAPH CABLE COMPANY, R. J. HARDING, Sheriff of Hinds County, Mississippi, and H. Casper, Late Assessor of Hinds County, Mississippi. }

To the honorable the circuit court of the first district of the State of Mississippi, within and for Hinds county:

The petition of The Postal Telegraph Cable Company, one of the defendants in the above-entitled action, respectfully shows:

I. That it, The Postal Telegraph Cable Company, is a corporation organized, under the laws of the State of New York, in the year 1886, for the purpose of constructing, owning, using, and operating electric telegraph lines within the State of New York and extending beyond the limits of said State into and across other States and Territories for the purpose of commercial and interstate communication by telegraph lines for general public use; that said corporation has its principal executive, financial, and accounting offices in the city of New York; that at all the times hereinafter mentioned said corporation was and still is engaged in the general telegraph business of receiving and sending telegrams over its lines for commercial purposes for the public between citizens within the State of New York and other States and across the same to and from other places within other States, and also in sending messages by telegraphic communication between the several departments of the Government of the United States and their officers and agents at a rate of charges designated and prescribed by the Postmaster General of the United States under the laws of Congress; that on or about the 6th day of March, 1886, said corporation accepted the provisions of the act of Congress of July 24th, 1886 (now title 65, U. S. Revised Statutes), relating to the occupancy of the post-roads of the United States by telegraph lines, and that in pursuance thereof the Postmaster General of the United States has annually, from time to time, designated said corporation as one of the telegraph companies that must transmit Government messages for the United States at a price and rate fixed by the Postmaster General, giving said messages preference over all other messages.

That most of the lines of said corporation are upon the post-roads of the United States; and your petitioner further represents that it is now and was during all the times hereinafter mentioned a citizen and resident of the said State of New York.

II. That on or about the 16th day of August, 1892, the above-entitled action was commenced in this honorable court by service of the summons therein upon the agent of the said defendant at the city of Jackson, in the said State of Mississippi; all of which will more fully appear by reference to said summons as the same is on record in this honorable court.

III. That the said action is a suit of a civil nature at common law in which the matter in dispute and the interest involved exceed, exclusive of interest and costs, the sum or value of two thousand dollars, and that there is in said suit a controversy wherein the matter in dispute and the interest involved exceed, exclusive of interest and costs, the sum of two thousand dollars (such controversy arising under the Constitution and laws of the United States and under the laws of the State of Mississippi); which said controversy is wholly between citizens of different States and which can be fully determined as between them, to wit, a controversy between your petitioner, who avers that it was at the time of the bringing of this suit and still is a citizen and resident of the said State of New York, and the said plaintiff, Wirt Adams, revenue agent of the State of Mississippi, each of whom your petitioner avers was then

and still is a citizen and resident of the State of Mississippi; that the said controversy is of the following nature, viz., a suit against the said defendant petitioner, The Postal Telegraph Cable Company, for privilege tax and State and county taxes alleged to be due by it for the years 1890 & 1891 to the State of Mississippi and the penalties thereupon, and that your petitioner and the said plaintiff are both actually interested in said controversy.

IV. And your petitioner offers herewith bond with good & sufficient surety for its entering in said circuit court of the United States for the southern district of Mississippi, on the first day of its next session, a copy of the record in this suit, and for paying all costs that may be awarded by said circuit court if said court shall hold that this suit was wrongfully or improperly removed thereto.

V. That by the act of Congress entitled "An act to amend the act of Congress approved March third, eighteen hundred and seventy-five, entitled 'An act to determine the jurisdiction of the circuit courts of the United States and to regulate the removal of causes from State courts and for other purposes,' and to further regulate the jurisdiction of circuit courts of the United States and for other purposes," approved March 3rd, 1887, as amended by an act entitled "An act to correct the enrollment of an act approved March 3rd, 1875," approved August 13th, 1888, it is the duty of this honorable court to accept this petition and the said bond and to proceed no further herein except to make an order for the removal of this cause to said circuit court of the United States for the southern district of Mississippi, and to accept the said surety and bond and to cause the record herein to be removed unto said circuit court of the United States in and for the district of Mississippi, and will ever pray.

POSTAL TELEGRAPH CABLE COMPANY,
By WM. H. BAKER, *Vice-pres't.*
MORDECAI & GADSDEN,
Attorneys for Petitioner.

STATE OF NEW YORK, } ss:
City & County of New York, }

Personally appeared before me William H. Baker who, being duly sworn, says that he is the vice-president of The Postal Telegraph Cable Company, defendant herein, said petitioner being a body corporate under the laws of the State of New York; that he has read the foregoing petition and knows the contents thereof, and that the statements and allegations therein contained are true of his own knowledge.

Sworn to and subscribed before me this 14th day of December, 1892.

[SEAL.] THEODORE L. CUYLER, JR.,
Notary Public, Kings Co.

Cert. filed in N. Y. Co.

9 The foregoing petition was presented to the court this — day of December, 1892.

STATE OF NEW YORK, }
City & County of New York, } *ss.:*

I, William J. McKinna, clerk of the city and county of New York and also clerk of the supreme court for the said city and county, being a court of record, do hereby certify that Theodore L. Cuyler, Jr., has filed in the clerk's office of the county of New York a certified copy of his appointment as notary public for the county of Kings, with his autograph signature, and was *and was* at the time of taking the annexed deposition duly authorized to take the same, and that I am well acquainted with the handwriting of said notary public and verily believe that the signature to the annexed certificate is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 14th day of Dec., 1892.

[SEAL.] WM. J. McKINNA, *Clerk.*

STATE OF MISSISSIPPI, }
County of Hinds, First District. }

WIRT ADAMS, Revenue Agent of the State of Mississippi, Plaintiff, }
vs. }
POSTAL TELEGRAPH CABLE COMPANY, R. J. HARDING, Sheriff of Hinds County, Mississippi, and H. Casper, Late Assessor of Hinds County, Mississippi, Defendants. }

Know all men by these presents that we, The Postal Telegraph Cable Company, the defendant in the above-entitled cause, as principal, and H. M. Threefoot and C. W. Robinson, as sureties, are held and firmly bound unto Wirt Adams, revenue agent of the State of Mississippi, the plaintiff in the above-entitled action, in the penal sum of one thousand dollars ($1,000.00); for the payment of which, well and truly to be made, we bind ourselves and each and every of our successors, heirs, executors, and administrators, jointly and severally, firmly by these presents.

In witness whereof the said Postal Telegraph Cable Company has caused these presents to be signed by its — the corporate seal attached and the said H. M. Threefoot and C. W. Robinson have hereunto set their hands and seals this 14th day of December, 1892.

The condition of the obligation is such that whereas the said Postal Telegraph Cable Company does herewith file in the circuit court of the first district of the State of Mississippi within and for the county of Hinds a petition for the removal of the above-entitled cause or suit, wherein the said Wirt Adams, revenue agent of the State of Mississippi, is plaintiff and said Postal Telegraph Cable Company is one of the defendants (there being a separate controversy therein, the said petitioner and the said plaintiff being both actually interested in said controversy), from said circuit court of the first district of the State of Mississippi within and for Hinds county to the circuit court of the United States for the district of Mississippi:

Now, therefore, the condition of the above obligation is such that

if the above bounden The Postal Telegraph Cable Company shall and do well and truly enter or cause to be entered in the said circuit court of the United States for the southern district of Mississippi, on or before the first day of its next session, a copy of the record in said action or suit and shall and do well and truly pay or cause to be paid all costs that may be awarded by said circuit court of the United States, which said court shall hold that said action or suit was wrongfully or improperly removed thereto, then this bond or obligation to be void and of no effect; otherwise to be and remain in full force, effect, and virtue.

[SEAL OF COMPANY.] POSTAL TELEGRAPH CABLE CO.

By WM. H. BAKER, *Vice-prest.*

H. M. THREEFOOT. [SEAL.]

C. W. ROBINSON. [SEAL.]

Attest: J. O. STEVENSON, *Secretary.*

Signed, sealed, and delivered in the presence of—

R. S. GUERNSEY.
JOHN DORAN.
JOHN D. McINNIS.
W. L. GOLDSMITH.

STATE OF NEW YORK, }
City & County of New York, } ss.:

On this the 14th day of December, 1892, before me, Theodore L. Cuyler, Jr., a notary public in and for the county and State aforesaid, personally appeared William H. Baker, *and* known to me to be the vice-president of the Postal Telegraph Cable Company, and acknowledged to me that he signed and delivered the foregoing instrument on behalf of the said Postal Telegraph Cable Company and caused the corporate seal of said company to be thereto attached, on the day and year therein mentioned, as the act and deed of the said Postal Telegraph Cable Company.

In testimony whereof I have hereunto set my hand and affixed my notary seal the year and day above written.

THEODORE L. CUYLER, JR.,
[SEAL.] *Notary Public, Kings Co.*

Cert. filed in N. Y. Co.

STATE OF NEW YORK, }
City & County of New York, } ss.:

I, William J. McKenna, clerk of the city and county of New York and also clerk of the supreme court for the said city and county, the same being a court of record, do hereby certify that Theodore L. Cuyler, Jr., has filed in the clerk's office of the county of New York a certified copy of his appointment as notary public for the county of Kings, with his autograph signature, and was at

the time of taking the proof or acknowledgment of the annexed instrument duly authorized to take the same; and, further, that I am well acquainted with the handwriting of such notary and verily believe the signature to the said certificate of proof or acknowledgment to be genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of said court and county the 14th day of Dec., 1892.

WM. J. McKENNA, *Clerk.*

STATE OF NEW YORK, } ss.:
City & County of New York, }

Personally appeared before me, Theodore L. Cuyler, Jr., the within R. S. Guernsey, one of the subscribing witnesses to the foregoing instrument, who, being first duly sworn, deposeth and saith that he saw the within-named Wm. H. Baker, as vice-president of the Postal Cable Company, whose name is subscribed thereto, sign and deliver the same and caused the corporate seal of the said company to be attached thereto; that he, this deponent, subscribed his name thereto as a witness in the presence of the said Wm. H. Baker, and that he saw the other subscribing witness, John Doran, sign the same in the presence of the said Wm. H. Baker, and that the witnesses signed in the presence of each other on the day and year therein named.

Given under my hand and official seal this 14th day of December, 1892.

THEODORE L. CUYLER, Jr.,
[SEAL N. P.] *Notary Public, Kings Co.*

Cert. filed in N. Y. Co.

11 STATE OF NEW YORK, } ss.:
City & County of New York, }

I, William J. McKenna, clerk of the city and county of New York and also clerk of the supreme court for the said county and city, the same being a court of record, do hereby certify that Theodore L. Cuyler, Jr., has filed in the clerk's office of the county of New York a certified copy of his appointment as notary public for the county of Kings, with his autograph signature, and was at the time of taking the proof or acknowledgment of the annexed instrument duly authorized to take the same; and, further, that I am well acquainted with the handwriting of such notary and verily believe the signature to the said certificate of proof or acknowledgment to be genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 14th day of December, 1892.

[SEAL.] WILLIAM J. McKENNA, *Clerk.*

STATE OF MISSISSIPPI, } ss.:
County of Lauderdale, }

Personally appeared before me, W. D. Cameron, circuit clerk, the within-named H. M. Threefoot, who acknowledged that he signed

and delivered the foregoing instrument on the 16th day of December, 1892, as his act and deed.

Given under my hand and official seal this 16th day of December, 1892.

[SEAL.]

W. D. CAMERON,
Clerk of the Circuit Court.

STATE OF MISSISSIPPI, }
County of Lauderdale, } ss:

Personally appeared before me, W. D. Cameron, circuit clerk, the within-named C. W. Robinson, who acknowledged that he signed and delivered the foregoing instrument on the — day of December, 1892, as his own act and deed.

Given under my hand and official seal this the — day of December, 1892.

[SEAL.]

W. D. CAMERON,
Clerk of Circuit Court.

STATE OF MISSISSIPPI, }
County of Lauderdale, } ss:

Personally appeared before me, W. D. Cameron, circuit clerk, the within-named John D. McInnis, one of the subscribing witnesses to the foregoing instrument, who, being first duly sworn, deposeth and saith that he saw the within-named H. M. Threefoot and C. W. Robinson, whose names are subscribed thereto, sign and deliver the same; that he, this deponent, subscribed his name as a witness thereto in the presence of the said H. M. Threefoot and C. W. Robinson, and that he saw the other subscribing witnesses sign the same in the presence of the said H. M. Threefoot and C. W. Robinson, and that the witnesses signed in the presence of each other on the day and year therein named.

JOHN D. McINNIS.

Given under my hand and official seal this the 16th day of December, 1892.

[SEAL.]

W. D. CAMERON,
Clerk Circuit Court.

STATE OF MISSISSIPPI, }
County of Lauderdale, } ss:

H. M. Threefoot, being duly sworn, deposes and says that he is one of the sureties named in the foregoing undertaking; that he is a resident and freeholder in the State of Mississippi, and that he is worth the sum of one thousand dollars over and above all his liabilities and exemptions in property within the State of Mississippi not by law exempt from execution.

12

(Signed) H. M. THREEFOOT.

Sworn to and subscribed before me this 16th day of December 1892.

[SEAL.]

W. D. CAMERON,
Clerk Circuit Court.

STATE OF MISSISSIPPI, }
County of Lauderdale, } ss:

C. W. Robinson, being duly sworn, deposes and says that he is one of the sureties named in the foregoing undertaking; that he is a resident and freeholder in the State of Mississippi, and that he is worth the sum of one thousand dollars over and above all of his liabilities and exemptions in property within the State of Mississippi not by law exempt from execution.

(Signed) C. W. ROBINSON.

Sworn to and subscribed before me this 16th day of December, 1892.

[SEAL.] W. D. CAMERON,
Clerk Circuit Court.

Removal papers endorsed: Filed Jan. 9th, 1893. F. B. Neal, clerk.

STATE OF MISSISSIPPI, }
County of Hinds, } ss:

I hereby approve the foregoing bond and the sureties thereto as good and sufficient.

F. B. NEAL, *Clerk*,
By W. J. BROWN, JR., *D. C.*

Order Transferring Cause to U. S. Court.

WIRT ADAMS, Rev. Ag't, Use, &c., } 2615. Jan. Term,
vs. Feby 4, '93.
POSTAL TELEGRAPH CABLE COMPANY. }

This cause coming on to be heard on the petition of defendants to have this cause transferred to the circuit court of the United States for the southern district of Mississippi, and the court having duly considered the same, it is ordered that the prayer of said petition be granted, and that the clerk of this court transmit a certified transcript of the record herein to the clerk of the circuit court of the United States for the southern district of Mississippi.

Order of Judge Remanding Cause.

STATE OF MISSISSIPPI:

Circuit Court, First District, Hinds County.

WIRT ADAMS, Revenue Agent of the State of Mississippi, Plaintiff, *vs.* POSTAL TELEGRAPH CABLE COMPANY, R. J. HARDING, Sheriff of Hinds County, Mississippi, and H. Casper, Late Assessor of Hinds County, Mississippi, Defendants. } 2615.

The above-entitled action coming on for hearing upon the petition of the defendant Postal Telegraph Cable Company for an order

removing said cause to the circuit court of the United States for the southern district of Mississippi, and it appearing to the court that said action is a suit or action of a civil nature at common law, wherein the matter in dispute and the interests involved exceed, exclusive of interest and costs, the sum or value of two thousand dollars, and that there is in said suit a controversy wherein the matter in dispute and the interests involved exceed, exclusive of interest and costs, the sum or value of two thousand dol-
13 lars (such controversy arising under the Constitution and laws of the United States), which said controversy is wholly between citizens of different States and which can be fully determined as between them, to wit, a controversy between your said petitioner, who avers that it was at the time of the bringing of this suit and still is a citizen and resident of the said State of New York, and the said plaintiff, Wirt Adams, revenue agent of the State of Mississippi, each of whom your petitioner avers was then and still is a citizen and resident of the State of Mississippi; that the said controversy is of the following nature, viz., a suit against the said defendant petitioner, The Postal Telegraph Cable Company, for privilege tax and State and county taxes alleged to be due by it for the years 1890 and 1891 to the State of Mississippi and the penalties thereupon, and that your petitioner and the said plaintiff are both actually interested in said controversy; and it still further appearing to the court that the time has not expired within which said defendant is required by the laws of the State of Mississippi to answer or plead to the summons herein or to the complaint or declaration thereon, and it further appearing to the court that the said defendant has made and filed a petition in this court for the removal of said action to the circuit court of the United States for the southern district of Mississippi, and that said defendant has made and filed with such petition a bond, with good and sufficient surety, for its entering in said circuit court of the United States for the southern district of Mississippi on the first day of its next session a copy of the record in such action and for paying all costs that may be awarded by the said circuit court of the United States for the southern district of Mississippi if such court shall hold that such suit or action was wrongfully or improperly removed thereto:

Now, on motion of Messrs. Mordecai & Gadsden, attorneys for said petitioner, said Postal Telegraph Cable Company, it is ordered that said action be, and is hereby, removed to the circuit court of the United States for the southern district of Mississippi, as prayed in said petition.

Dated at Jackson, in the said district and State, this 9th day of January, 1893.

J. B. CHRISMAN.

Copy of Order of U. S. Circuit Court.

In the Circuit Court of the United States for the Southern District of Mississippi.

WIRT ADAMS, Rev. Ag't,
vs.
POSTAL TELEGRAPH CABLE CO.

This cause coming on this day for hearing on the motion of plaintiff to remand said cause to the circuit court of the first district of Hinds county, Mississippi, *and* the court, having heard said motion and carefully considered the same, adjudges and decrees that said motion be sustained, and that this cause be remanded for trial in said State court, from which it was improperly removed.

Ordered, further, that the Postal Telegraph Cable Company and the sureties on their bond pay the costs of said removal and of this court, to be taxed, for which let execution issue.

I, L. B. Moseley, clerk of the circuit court of the United States for the southern district of Mississippi, certify the above to be a correct copy of an order of said court in the above-stated cause as the same is of record in said court.

Given under my hand & the seal of said court, at Jackson, this July 4th, 1893.

[SEAL.] L. B. MOSELEY, *Clerk*,
By R. H. WINTER, *D. C.*

14 Endorsed: Filed July 5, '93. F. B. Neal, clerk, by W. J. Brown, Jr., D. C.

Def't Pleas.

In the Circuit Court of the First District of Hinds County, State of Mississippi.

WIRT ADAMS, State Revenue Agent,
vs.
THE POSTAL TELEGRAPH CABLE COMPANY.

Comes The Postal Telegraph Cable Company, defendant herein, and denies each and every allegation in the first count of plaintiff's declaration, and says that it does not owe and is not liable to pay the sums sued for or any part of either. Of this said defendant puts itself upon the country.

And for special pleas to said first count herein said defendant alleges the following:

1. That this defendant is a telegraph company duly incorporated and organized under the laws of the State of New York, and was on the 1st day of January, 1890, 1891, and 1892, respectively, engaged in and still continues to carry on the business of a telegraph company, having offices in various cities and towns of the State of Mississippi for the purpose of receiving and sending telegraphic messages and

maintaining and operating certain lines of telegraph on various post-roads, public roads, and railroads extending over, across, leading into and from the State of Mississippi to the State of Alabama and other points in other States in the United States and in the Dominion of Canada, and that by its charter it is authorized to construct, maintain, and operate lines of telegraph in and between the various States of the Union, including the State of Mississippi.

2. That this defendant is also lessee of the Atlantic Postal Telegraph Cable Company, which was prior to the said 1st day of January, 1890, and still is a telegraph company duly incorporated and organized under the laws of the State of New York, and by its charter authorized to construct, maintain, and operate lines of telegraph in and between the various States of the Union, and also including the State of Mississippi, and that this defendant is also the lessee or owner of many other telegraph lines that run in, through, and over most of the States and Territories of the United States, including the States of North Carolina, South Carolina, Georgia, Alabama, Mississippi, Louisiana, New York, New Jersey, Pennsylvania, Maryland, District of Columbia, and many of the Western States, and that as such lessee and owner this defendant is engaged in the general public telegraph business of transmitting messages for commercial purposes by, along, and over its lines within, from, through, and across the State of Mississippi and many other States and Territories of the Union, and has offices for the receiving and the sending of messages by telegraph in each and every State and Territory wherein the lines owned or leased by it extend, and has offices in various cities and towns of the State of Mississippi for the general purposes of its business, from which its poles and wires run and extend over the public highways, post-roads, and public roads throughout the State of Mississippi, across and into the States of Alabama and Louisiana, respectively, and also extending and passing therefrom into other adjoining States of the Union at different points; that on or about the 6th day of March, 1886, this defendant, said Telegraph Cable Company, duly filed its written acceptance with the Postmaster General of the United States of the restrictions and obligations of the act of Congress entitled "An act to aid in the construction of telegraph lines and to secure to the Government the use of the same for postal, military, and other purposes," approved July 24th, 1866, now title 65 of the United States Revised Statutes, relating to the occupancy of post-roads of the United States by telegraph lines, and that in pursuance thereof the Postmaster General had at the times hereinafter stated designated this defendant as one of the telegraph companies that must transmit messages for the United States at a price and rate to be fixed by the said Postmaster General, which said designation is still of force and this defendant is still engaged as a governmental agent of the United States, and was at the times hereinafter mentioned so engaged in transmitting messages for the Government of the United States between its various officers, not only from points within the State of Mississippi to points within the State of Mississippi, but also for such governmental offi-

cers from points wholly within the State of Mississippi to other points also wholly within the said State.

That this defendant, proceeding thereunder, did construct and now has its lines on the various public roads and post-roads of the United States within the State of Mississippi and in all of the States and Territories into which its lines extend, and in accordance with the authority of said charter and said act of Congress and at the present time, as well as at the times hereinbefore and hereinafter referred to, was and still is maintaining and operating said lines of telegraph on the various highways and post-roads as aforesaid leading into, over, through, and across the said State of Mississippi to the State of Alabama, as well as of the State of Louisiana, and passing into by continuous lines many other States and Territories of the United States, including North Carolina, South Carolina, Virginia, District of Columbia, Maryland, Delaware, Pennsylvania, New York, New Jersey, Massachusetts, and other States of the Union.

That the said telegraph lines so running into and through the said State of Mississippi connect with and extend beyond the termini of said railroads and post-roads and other highways, such post-roads and rivers making continuous lines of telegraph from the offices of the said company to the various cities and towns in said State of Mississippi, to, through, and over many of the principal railroads, highways, post-roads, and military roads in and of the United States, having offices for the transaction of telegraphic business in the various departments of the Government at Washington, in the District of Columbia, and in nearly all of the principal cities, towns, and villages of the United States and Territories thereof.

That all of said railroads and highways so leading into and through the said State of Mississippi, as well as in the United States, are public highways, and that the mails of the United States are regularly carried thereon and delivered therefrom under the authority and direction of the Postmaster General, and that the said railroads and highways and each of them, as well as the public roads in the State of Mississippi, through which said lines of telegraph run are post-roads of the United States.

That said telegraph lines are also constructed over, under, and across the navigable streams of the United States in the State of Mississippi and in the other States of the Union, but in all cases such lines are so constructed and maintained so as not to obstruct the navigation of said streams and the ordinary travel on said military and post-roads; that said telegraph company was before and during the years commencing, respectively, the 1st day of January, 1890, and the 1st day of January, 1891, and now is engaged in the business of receiving and sending telegrams over said lines for the public between its offices in the said State of Mississippi and other places in other States and Territories of the United States and to and from foreign countries, and also in sending telegraphic communications between the several departments of the Government of the United States and their officers and agents, giving priority

to said official telegraphic communications over all other business, and this defendant alleges that said official telegraphic messages have been and are sent at rates which have been fixed *at* the Postmaster General annually since the 6th day of March, 1886.

16 2. And this defendant further alleges that by its name and by virtue of the act of incorporation and subject to the Constitution and statute laws of the United States it was, on and previous to the 1st days of January, 1890 and 1891, respectively, and still is engaged in said telegraph business for the purpose of interstate commerce and as a governmental agent of the United States of America on and previous to the times hereinafter mentioned, as well as now, and having for said purposes offices within the State of Mississippi. This defendant alleges that it is not subject or liable to the provisions of an act of the legislature of the State of Mississippi entitled "An act to amend sections 557 and 558 of the Code of 1880 so as to increase the public revenue and provide for the faithful collection of the same," approved March 8th, 1888; and for a further defense this defendant says:

3. That the said act of the legislature of the State of Mississippi under which it is sought to hold this defendant liable, as alleged in said declaration, is in contravention to and in violation of section 5263 of the Revised Statutes of the United States and in violation of the provisions of section VIII, article 1, of the Constitution of the United States; is also in violation of the provisions of the fifth and *and* fourteenth amendments to the Constitution of the United States, as well as section 112 of the constitution of the State of Mississippi, and is *ultra vires* and void.

4. And for a further affirmative defense this defendant alleges that its various offices within the State of Mississippi are merely initial points for sending telegraphic messages elsewhere and terminal points for receiving such messages, but that the sending, receiving, and carrying of such messages is a continuous and complete transaction, extending almost simultaneously along its different entire lines and routes from the several various offices within the said State of Mississippi to and from different points within and without the said State of Mississippi hereinbefore alleged.

5. That by said act of the legislature of the State of Mississippi, which, as hereinbefore stated, is unconstitutional, *ultra vires*, and void, the attempt is made to assess and tax upon the property and business of this defendant for public purposes at a greater rate than is assessed and taxed on property of individuals in the State of Mississippi, and that such assessment and taxation is not according to the valuation of said property and is at a much greater rate of taxation for public purposes than other monied capital or property employed or invested in commercial business and employed in other commercial operations within the State of Mississippi is taxed or assessed for public purposes, and that said taxes are unequally imposed and are inequitable and contrary to the constitution of the State of Mississippi as well as to the Constitution of the United States and laws of Congress, as hereinbefore set forth; that in and by virtue of — 112 of the constitution of the State of Mississippi all

property must be assessed and taxed according to its value for purposes of revenue and taxes must be uniform.

6. Defendant further says that it is assessed annually upon all its property according to its valuation in the State of Mississippi by the railroad commissioners of said State and is taxed annually upon said value for State and county purposes. This defendant also says that under the laws of the State of Mississippi it is subject to laws which require the annual payment of specific license fees and charges in cities and towns, for the privilege of doing its business therein in addition to the tax upon the property; that said license charges and fees often exceed more than ten per cent. of the value of the property of defendant located within the limits of such city and town in the State of Mississippi. Defendant further says that this action is brought to recover a privilege or license tax imposed
for the purpose of revenue in addition to the taxation upon
17 the value of the property of defendant and in addition to the
annual local license charges and fees imposed annually by cities and towns upon the defendant for the purposes of revenue. A statement showing the amount of each such license taxes and the value of the property upon which it is imposed will more fully appear in the trial of this action.

7. This defendant admits that it did not make the report of its miles of wire or pay the tax in the declaration mentioned; that said report was for the purpose of imposing upon and exacting an illegal and unconstitutional tax from defendant, and was for no other purpose or object, and is void, and defendant cannot be made liable for any penalty for said neglect; that the property of like nature of defendant's which *are* used by domestic corporations in the State of Mississippi *are* not taxed or assessed or charged by law for privileges in the manner or form or nature or extent as is this defendant, as in the declaration mentioned; that there are a large number of miles of wire similar to those of defendant *and* are used as electrical conductors for telephone and electric light and electric power purposes within the State of Mississippi, and that the same are not taxed or assessed or charged by law for privileges in the manner or form or nature or extent as is this defendant, as set forth in the declaration; that said taxes in the declaration mentioned are not imposed upon the defendant or its property or business in the same manner or form or nature as are taxes imposed or required to be paid by individuals upon property or business in the State of Mississippi; that the telegraph wires used by the defendant in the declaration mentioned do not exceed in value the sum of fifteen dollars per mile for each mile thereof, and that property of like nature and use belonging to other corporations in the State of Mississippi is of much more value than is that of defendant, and yet it is assessed and taxed to the extent only and in the manner and amount as is that in use by defendant, as in the declaration mentioned.

8. Defendant further says that said license charge or privilege tax in the complaint named only applies to telegraph lines and wires along railroad lines which are in use by railroads and belong-

ing to or are operated in connection with the railroad business, and that the same cannot be made to apply to the telegraph lines of this defendant; that none of the lines of defendant are a part of or belong to any railroad lines and are not connected in any manner with said railroads or their business, and said lines of defendant are only along the public common highways in said State.

9. That said tax and charge upon the telegraph lines of defendant in the declaration mentioned under the facts above stated is a restraint upon the use of the post-roads of the United States and is an infringement upon the legislative domain of Congress.

That said matters and sums claimed in the complaint are a restraint upon the franchises of the defendant in the State of Mississippi and are a restraint upon trade and interstate commerce and communication by telegraph between the States and *is* a restraint upon the duly authorized agent of the Government in the transaction of Government business; that the enforcement of said claims in the declaration mentioned would be against the public policy of the State of Mississippi and against the public policy of the United States; all of which defendant is ready to verify. Wherefore it prays the judgment of the court in respect to the matters set forth in said special pleas, and that it go hence, &c.

MORDECAI & GADSDEN,
BRAME & ALEXANDER,
Defendant's Attorneys.
R. S. GUERNSEY, *Of Counsel.*

Endorsed: Filed June 24, '93. F. B. Neal, clerk, by W. J. Brown, Jr., D. C.

18 *Demurrer and Agreement.*

Circuit Court Hinds County, 1st District.

WIRT ADAMS, Rev. Agent, }
vs. } 2615.
POSTAL TELEGRAPH CABLE CO. }

Defendant, The Postal Telegraph Cable Co., leave being first had, demurs to the second count in the declaration herein, and for cause says:

1. It shows no liability on defendant for the ad valorem taxes sued for.

2. It shows no valid or legal assessment for valuation taxes.

3. Our statutes conferring the power on the State revenue agent to assess for ad valorem taxes and bring suit therefor are unconstitutional.

4. No liability to the tax is shown and no sufficient compliance with the requirements of law on the part of plaintiff.

BRAME & ALEXANDER,
MORDECAI & GADSDEN,
For Deft.

The original demurrer filed by defendant in the within cause having been lost or mislaid, agreed that the within shall be substituted as a copy of it. The clerk will copy this in the transcript on appeal as a part of the record and as a substitute for the original demurrer which was filed in the case before judgment.

Sept. 16, 1893.

BRAME & ALEXANDER,
Att'ys for Postal Telegraph Cable Co.
WILLIAMSON & POTTER,
Attorneys for Plaintiff.

WIRT ADAMS, Rev. Ag't, Use, &c.,)
vs.)
POSTAL TELEGRAPH CABLE COMPANY.)

Comes the plaintiff, by his attorneys, and demurs to the following special pleas filed by defendant in said cause, to wit, pleas Nos. 1, 2, 3, 4, 5, 6, 7, 8, & 9, being all the pleas now on file in said cause (except the general issue), and for cause of demurrer says:

1st. That the matter set out and contained in said several pleas constitutes no defence to plaintiff's said action.

2nd. That said pleas are insufficient in law.

WILLIAMSON & POTTER,
Attorneys for Plaintiff.

Endorsed: Filed July 10th, 1893. F. B. Neal, clerk, by W. J. Brown, Jr., D. C.

Judgment.

In the Circuit Court, 1st Dist. of Hinds County, Mississippi, July Term, Aug. 2nd, 1893.

WIRT ADAMS, State Revenue Agent, Use, &c.,)
vs.) 2615.
POSTAL TELEGRAPH CABLE COMPANY *et al.*)

This cause coming on to be heard upon the demurrer of the defendant to the second count of plaintiff's declaration and upon the demurrer of the plaintiff to the pleas of defendant filed to the 1st count of the declaration, which counsel for both parties stated to the court that they would waive any informality in the declaration or the pleas, with a view to reach a decision of the constitutional question involved; and thereupon both demurrers were heard together, and the court, having considered the same, orders that the demurrer of the defendant to second count of plaintiff's declaration be sustained, and that the demurrer of plaintiff to the pleas of defendant to the first count in the declaration be also sustained, with leave to the defendant to plead over, which the defendant
19 declined to do. It is therefore considered and ordered by the court that plaintiff do have judgment, and that he have and recover of and from the defendant The Postal Telegraph Cable Company, for the use of the State of Mississippi, the sum of nine

hundred and twenty-seven dollars and twenty-one cents ($927.21), being the amount of the privilege tax sued for, with interest at 6 % per annum from date that said tax became due, together with all costs in this cause expended and to be taxed, for which let execution issue, and that the trial proceed between plaintiff and the other defendants to ascertain whether or not the failure to pay said tax was caused by wilful default or negligence of the assessor and tax-collector.

Judgment.

In the Circuit Court of 1st District of Hinds County, Mississippi, July Term, Aug. 2nd, 1893.

WIRT ADAMS, State Revenue Ag't, Use, &c., } 2615.
vs.
POSTAL TELEGRAPH CABLE COMPANY. }

This cause coming on to be heard on the plea of the general issue filed by R. J. Harding, tax collector, and H. Casper, assessor, also came a jury of good and lawful men, to wit, M. B. Harris and eleven others, who, being duly empaneled and sworn, upon their oaths do say: "We, the jury, find for the defendants R. J. Harding and H. Casper." It is therefore considered by the court and so ordered and adjudged that the said defendants, R. J. Harding and H. Casper, go hence without day.

Appeal Bond to Supreme Court.

THE STATE OF MISSISSIPPI, } ss:
Hinds County, 1st District, }

Know all men by these presents that we, The Postal Telegraph Cable Company, a corporation, as principal, and E. M. Parker and C. H. Alexander, freeholders, sureties, are held and firmly bound unto Wirt Adams, revenue agent of the State of Mississippi, in the penal sum of eighteen hundred and fifty-four $\frac{42}{100}$ dollars; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Signed and delivered the 25 day of August, 1893.

The condition of the foregoing obligation is such that whereas, in a cause lately pending in the circuit court of the first district of Hinds county, the said Wirt Adams, revenue agent, recovered judgment against the Postal Telegraph Cable Co., at the July term of said court, on the 2nd day of August, 1893, for $927.21, and the said defendant has prayed and obtained an appeal to the supreme court:

Now, if the said appellant shall well and truly satisfy the judgment complained of, and also such final judgment as may be made in the

cause and all costs if the judgment shall be affirmed, then this obligation to be void; otherwise to remain in full force and virtue.

POSTAL TELEGRAPH CABLE CO.,
By BRAME & ALEXANDER, *Att'ys.*
WM. LYLE.
C. H. ALEXANDER.
E. M. PARKER.

The foregoing bond approved 26 day of August, 1893.

F. B. NEAL, *Circuit Clerk*,
By W. J. BROWN, Jr., *D. C.*

Endorsed: Bond. Filed Aug. 26, '93. F. B. Neal, clerk, by W. J. Brown, Jr., D. C.

20 STATE OF MISSISSIPPI, }
Hinds County, } *ss.:*

I, F. B. Neal, clerk of the circuit court in and for said county and State, hereby certify that the foregoing and annexed (51) pages *to* contain a full, true, and correct transcript of the record in the case named in the caption, together with the original appeal bond in said cause, as the same remains on file and of record in my office.

Given under my hand and seal of said court this 29th day of September, 1893.

[SEAL.] F. B. NEAL, *Clerk.*

Record endorsed: Filed October 7th, 1893. Oliver Clifton, clerk, by C. C. Campbell, D. C.

And on Monday, October 23, 1893, the following order was entered in said supreme court, to wit:

POSTAL TELEGRAPH CABLE CO. }
v. } 7519.
WIRT ADAMS, Rev. Ag't. }

Argued orally by Mr. T. M. Mordecai, for appellant.

And on Tuesday, October 24, 1893, the following further order was entered by said supreme court, to wit:

POSTAL TELEGRAPH CABLE CO. }
v. } 7519.
WIRT ADAMS, Rev. Ag't. }

Argued orally by Moss, T. M. Mordecai and L. Brame, for appellant, and Mr. C. M. Williamson, for appellee, and submitted on briefs by Moss, R. S. Guernsey, Mordecai & Gadsden, and Brame & Alexander, for the appellant, and Moss, Williamson & Potter, for appellee.

And on Monday, December 4, 1893, the following opinion and judgment was made and entered by said supreme court, to wit:

21 POSTAL TELEGRAPH CABLE CO. v. WIRT ADAMS, Rev. Ag't. No. 7519.

Woods, *J.*, delivered the opinion of the court:

This action was instituted by the revenue agent of the State for the recovery of a privilege tax alleged to be due by the appellant for the years 1888 & 1889, under section 585, Code of 1880, and the amendment thereto contained in section 1, chapter 3, Acts of 1888. Under the statute thus amended, among other provisions, we find this language: "A tax on privileges is levied as follows, to wit: On each telegraph company operating 1,000 miles or more, which shall be in lieu of other State, county, or municipal taxes, $3,000; on each telegraph company operating less than 1,000 miles of wire, for each mile of wire, $1.00." The declaration alleges that the appellant operated, in the aggregate, during the years named, three hundred and ninety-one and $\frac{25}{100}$ miles of wire in the State of Mississippi, and was therefore, under the statute, liable for a tax of $391 28 for each year named.

It will be thus seen at once that this is a tax imposed upon — telegraph company, in lieu of all others, as a privilege tax, and its amount is graduated according to the amount and value of the property measured by miles. It is to be noticed that it is in lieu of all other taxes, State, county, municipal. The reasonableness of the imposition appears in the record, as shown by the second count of the declaration and its exhibits, whereby the appellant seems to be burdened in this way with a tax much less than that which would be produced if its property had been subjected to a single ad valorem tax.

The pleas bring in question the validity of our statute and aver its conflict with the interstate-commerce clause of the Constitution of the United States.

The record presents a Federal question and we acknowledge ourselves bound to follow the decisions of the court of last resort of the United States, if that court shall be found to have adjudicated it. Our difficulty arises from our inability to say with confidence what the Supreme Court of the United States has finally determined in cases of like character. The reported opinions of that court are so irreconcilable in their variances and seeming conflicts, in our view, that it is with diffidence that the impartial student can affirm what will or will not follow in any given state of case.

If the line of decision adopted in Pensacola Telegraph Co. *v.* Western Union Telegraph Co., 96 U. S., 1; Western Union Telegraph Co. *v.* Texas, 105 U. S., 460; Gloucester Ferry Co. *v.* Pennsylvania, 114 U. S., 196; Picard *v.* Pullman Southern Car Co., 117 U. S., 34; Robbins *v.* Shelby County Taxing District, 120 U. S., 489; Leloup *v.* Port of Mobile, 127 U. S., 640, and Crutcher *v.* Kentucky, 141 U. S., 47, stood alone, the settlement of the controversy in the case at bar would be made without great difficulty in accordance with the contention of the appellant; but the numerous other cases decided by the same great tribunal in which was involved the

same or like questions as are to be found in those just named, and in which contrary views seem to have been upheld, involves the controversy in much apparent and, as we think, some real difficulty. If we had for our guidance only the other lines of decisions; embracing State tax on railway gross receipts, 15 Wall., 284; Osborne *v.* Mobile, 16 Wall., 479; Wiggins Ferry Co. *v.* East St. Louis, 107 U. S., 365; Western Union Telegraph Co. *v.* Massachusetts, 125 U. S., 530; Maine *v.* Grand Trunk R'y Co., 142 U. S., 217; Ficklin *v.* Shelby County, 145 U. S., 1; St. Louis *v.* Western Union Telegraph Co., 148 U. S., 92, the right of the revenue agent of the State to maintain this suit successfully would seem to be well established in accordance with the views of counsel for appellee.

If from generalization we descend to detail, the confusion that prevails in the decisions of the court whose lead we are bound to follow touching interstate commerce will be seen at once, and their confusion will deepen on protracted examination.

22 In the case of The Telegraph Co. *v.* Texas, *supra*, Mr. Chief Justice Waite, speaking for a unanimous court, said: "The Western Union Telegraph Company, having accepted the restrictions and obligations of this provision by Congress, occupies in Texas the position of an instrument of foreign and interstate commerce and of a Government agent for the transmission of messages on public business. Its property in the State is subject to taxation the same as other property, and it may undoubtedly be taxed in a proper way on account of its occupation and business." This very language of the then chief justice is quoted with approbation in Telegraph Co. *v.* Massachusetts, 125 U. S., by Mr. Justice Miller, speaking for an undivided court. It is unqualifiedly declared in these two cases that the telegraph company—the agent of the Government and engaged in interstate commerce as held repeatedly in the court whose decisions we are reviewing—"may undoubtedly be taxed in a proper way on account of its occupation and its business." But in Leloup *v.* Port of Mobile (as well as in other cases), 127 U. S., Mr. Justice Bradley, speaking for the same united court, says: "Ordinary occupations are taxed in various ways, and most cases legitimately taxed. But we fail to see how a State can tax a business occupation when it cannot tax the business itself * * * In Western Union Telegraph Co. *v.* Texas, 105 U. S., 460, we decided that a State cannot lay a tax on the interstate business of a telegraph company, as it is interstate commerce. * * * In the present case, it is true, the tax is not laid on the occupation or the business of sending such messages. It comes plainly within the principle of the decisions lately made by this court in Robbins *v.* Taxing District of Shelby County, 120 U. S., 489, and Philadelphia and Southern Steamship Co. *v.* Pennsylvania, 122 U. S., 326." And this rule seems to be adopted in one or two later cases. The conflict in the decisions on this point appears to be sharp and irreconcilable.

The case of Osborne *v.* Mobile, 16 Wall., occupies a most unique position. In this case the court held that a privilege tax levied upon an express company having business intraterritorial as well as extraterritorial was not invalid or repugnant to the interstate

commerce clause of the Federal Constitution. In Pickard *v.* Pullman Southern Car Company, 117 U. S., the case of Osborne *v.* Mobile was re-examined and the correctness of its determination reaffirmed, and in Robbins *v.* Shelby Taxing District, 120 U. S., Mr. Chief Justice Waite and Mr. Justice Field and Mr. Justice Gray in their dissenting opinion refer to it as unchallenged authority. It has been quoted by Mr. Justice Bradley, in a dissenting opinion, as authority. But the judge last named, in delivering the opinion of the court in another case, the case of Leloup *v.* Port of Mobile, indulges the remark that the Osborne case would now be decided otherwise.

Again, in the case of Gloucester Ferry Co. *v.* Pennsylvania, 114 U. S., 196, it was held that the transportation of passengers and freight for hire by a steam ferry across the Delaware river from New Jersey to Philadelphia by a New Jersey corporation is interstate commerce and not subject to taxation by the State of Pennsylvania; while in Wiggins Ferry Co. *v.* East St. Louis, 107 U. S., 365, the court holds that the State has the power to impose a license fee upon ferry-keepers living in the State for boats which they own and use in conveying from a landing in the State passengers and goods across a navigable river to a landing in another State.

Once more, Pickard *v.* Pullman Southern Car Co., 117 U. S., 34; Leloup *v.* Mobile, 127 U. S., 640, and Norfolk & Southern Railroad Co. *v.* Pennsylvania, 136 U. S., 114, in no doubtful terms deny to the States the right to impose a license tax on any agency employed even partially in interstate commerce; but, on the other hand, Telegraph Co. *v.* Massachusetts, 125 U. S., 530, and Maine *v.* Grand Trunk Railway Co., 142 U. S., 217, unmistakably uphold a tax imposed upon a railway company

23 engaged partially in interstate commerce for the privilege of exercising its franchises. It is true the amount of these privilege taxes is arrived at by the ascertainment of the earnings of the railway company within the State and by the ascertainment of the valuation of the property within the State in the Telegraph Company case; but they are, by the terms of the statutes of the two States imposing them, in the one case "an annual excise tax for the privilege of exercising its franchises in this State, which, with the tax provided for in section one, shall be in lieu of all taxes upon such railroad, its property and stock," and, in the other, "a tax upon its corporate franchises at a valuation thereof equal to the aggregate value of the shares in its capital stock." In the case of The Telegraph Company *v.* Massachusetts, 125 U. S., it is to be observed that the tax was not upon the franchises of a domestic corporation, but upon those of a domestic one, the Western Union Telegraph Co., a New York corporation, and one employed in interstate commerce and employed as a governmental agency also. It is no answer to the contention that there were privilege taxes—taxes upon the exercise of franchises—to assert that they were really taxes levied upon the property of the corporation. They are distinctly declared to be taxes on corporate franchises, taxes for the privilege of exercising corporate franchises, and the mere fact that the State

adopted one method or another of fixing the amount of the tax is of no real value in the discussion. The question involved is not that of amount or method of ascertaining amount, but the validity of the tax itself, in any amount, ascertained in any way.

Are we mistaken in declaring that the decisions of the Supreme Court of the United States are not concordant on this most perplexing subject? We support ourselves in our perplexity by quoting the language of Mr. Justice Miller in Fargo *v.* Michigan, 121 U. S., 230. Speaking on this very subject the learned judge said: "With reference to the utterances of this court until within a very short time past as to what constitutes commerce among the several States and as to what enactments by the State legislature are in violation of the constitutional provision on that subject, it may be admitted that the court has not always employed the same language, and that all of the judges of the court who have written opinions for it may not have meant precisely the same thing." It appears to us that it is just and altogether decorous now to say that repeated and careful study of the decisions between 121 and 148 U. S. will warrant us in again asserting that the language employed by the court in the more recent cases of this character has not been the same, and that the judges who have written the later opinions have not meant precisely the same thing. Unable, then, to say certainly what the judgment of the Supreme Court of the United States would be in the case in hand if presented to it, we feel at liberty to decide the controversy according to our own views of what is right on the facts disclosed, views not unannounced in that tribunal whose final word is law.

This is the case of a foreign corporation admitted to the use and enjoyment of its corporate franchises in our State upon terms of perfect equality with all others. It is freely permitted to engage in the vast and various employments connected with its business. It has the use and enjoyment of the country highways of the State and the streets of our villages, towns, and cities for the planting of its poles and the construction of its lines, and it has the care and protection of our laws and Government. In return, the State claims the right to treat it as she treats similar corporations chartered by her own authority. She asserts her authority to tax the exercise of its franchises in her midst as she does all others, domestic as well as foreign corporations. The State may tax its property as she does all other property of person or corporation within her limits. She may tax the exercise of its franchises within her borders and under the sheltering protection of her laws and Government and no foreign corporation may arrogantly assume any superiority over her domestic corporations. The privilege tax, the tax on the business, the occupation, the tax on the exercise of franchises, may be incidentally burdensome to interstate commerce. It does affect the business somewhat and inevitably, but so does an ad valorem tax on the property employed in such commerce. It subtracts that much from the sum total engaged in the traffic. So does the tax on gross receipts, as in the case of State tax on railway gross receipt, 15 Wall. So does the tax for the privilege of exercising its fran-

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chises by a railroad company in any State, ascertainable and determinable by the amount of its gross transportation receipts, sealed as required in Maine *v.* Grand Trunk Railway Co., 142 U. S. Every tax is a burden and to the extent imposed is an interference with the pursuit or business upon which it is laid. If the business is partly interstate commerce, then that commerce is incidentally affected and interfered with by every tax of any nature whatever that may be levied on it.

In the case at bar there is no direct burden upon interstate commerce; there is no further interference with it than will be found necessarily to result from the imposition of any burden of taxation in any shape. For the use and occupation of the public roads of this State, for protection of its laws and government in the exercise of its franchises, and as its reasonable and proper contribution for the support of the Government whose care and shelter it enjoys, the State has imposed a privilege tax ascertainable and determinable by the number of miles of wire in this State, in lieu of all other taxes, and in an amount less than an ad valorem tax on its visible property would yield. The appellant is reasonably required to pay what is called a privilege tax, but it is a tax in lieu of all ad valorem and other taxes, State, county, and municipal, on property in this State. The State has chosen to impose a smaller burden than she might have done, unquestionably, if the property of the appellant had been subjected to the same rate of taxation as all other property whose situs is within her borders. By the imposition of a certain tax per mile on the lines wholly within her limits, the State secures from appellant that which appears certainly not to be a sum in excess of the amount which might have been imposed *as* an ad valorem tax. It seems to us that this position is supported by the opinions delivered and the results reached in Osborne *v.* Mobile, Telegraph Company *v.* Massachusetts, Maine *v.* Grand Trunk Railway Co., Ficklin *v.* Shelby County, and St. Louis *v.* Western Union Telegraph Company, not to mention others that collaterally yet powerfully tend in the same direction.

In the case at bar there is no taxation of messages, interstate and other; there is no exclusion or attempted exclusion by State law of a governmental agency or a foreign corporation partially engaged in interstate commerce; there is no taxation which interferes with, interrupts, or burdens interstate commerce. There is a moderate, reasonable tax called a privilege tax, but ascertainable and determinable by the amount and necessarily by the value of the appellant's property, lying wholly in this State, imposed in lieu of all others, and this tax burdens and interferes with interstate commerce just as a tax on each telegraph pole does, as in the case of St. Louis *v.* Western Union Telegraph Co., or as a tax on corporate franchises whose value is ascertainable and determinable by value of the shares of capital stock proportioned to the length of the telegraph lines in the State, as in Telegraph Company *v.* Massachusetts, or as an annual tax for the privilege of exercising corporate franchises whose amount is to be determined by the gross transportation receipts, measured by the intrastate mileage compared with

the total length of the railway within and without the State, as in Maine *v.* Grand Trunk Railway Co.

We adopt the language of Mr. Justice Miller in delivering the opinion of the court in Western Union Telegraph Co. *v.* Massachusetts: "While the State could not interfere by any specific statute to prevent a corporation from placing its lines along their post-roads, or stop the use of them after they were placed there,
25 nevertheless the company receiving the benefit of the laws of the State for the protection of its property and its rights is liable to be taxed upon its real and personal property as any other person would be. It never could have been intended by the Congress of the United States, in conferring upon a corporation of one State the authority to enter the territory of another State and erect its poles and lines therein, to establish the proposition that such a company owed no obedience to the laws of the State into which it thus entered and was under no obligation to pay its fair proportion of the taxes necessary to its support;" and to this enlightened and just observation we unite the equally enlightened and just observation of Mr. Chief Justice Waite in Telegraph Co. *v.* Texas (quoted with approbation in the long subsequent case of Telegraph Co. *v.* Massachusetts, 127 U. S.): "The Western Union Telegraph Co., having accepted the restrictions and obligations of this provision by Congress, occupies in Texas the position of an instrument of foreign and interstate commerce and of a Government agent for the transmission of messages on public business. Its property in the State is subject to taxation the same as other property, and it may undoubtedly be taxed in a proper way on account of its occupation and business."

Affirmed.

26 *Judgment.*

POSTAL TELEGRAPH CABLE CO. }
v. } 7519.
WIRT ADAMS, REV. AG'T. }

This cause having been submitted on a former day of this term on the record herein from the circuit court of Hinds county, 1st district, and this court having sufficiently examined and considered the same, and being of opinion that there is no error therein, doth order and adjudge that the judgment of said circuit court rendered in this cause at the July term thereof, A. D. 1893, on the 2nd day of August, 1893, be, and the same is hereby, affirmed; and it is further considered and so ordered and adjudged by this court that the appellee do have and recover of the appellant and Wm. Lyle, C. H. Alexander, and E. M. Parker, sureties in the appeal bond, the sum of nine hundred and twenty-seven and $\frac{21}{100}$ dollars, the amount of the judgment in the court below, together with the further sum of forty-six and $\frac{35}{100}$ dollars, damages at the rate of 5 per centum, as allowed by law, as well as interest on the amount of said judgment from date of rendition till paid at the rate of 6 per centum per annum, and also

the costs of this cause in this court and in the court below expended, &c., to be taxed, &c.

And on the 1st day of February, 1894, there was filed in the office of the clerk of said supreme court the following motion, order on said motion, and certificate, to wit:

STATE OF MISSISSIPPI:

In the Supreme Court.

THE POSTAL TELEGRAPH CABLE COMPANY, Plaintiff in Error,
vs.
WILT ADAMS, Revenue Agent of the State of Mississippi, Defendant in Error.

To the honorable the chief justice and associate justices of the supreme court of the State of Mississippi:

Now comes the above-named plaintiff in error, The Postal Telegraph Cable Company, by Mordecai & Gadsden, R. S. Guernsey, and Brame & Alexander, its attorneys, and moves the court that a certificate be granted by this court, and that the clerk of this court be instructed and directed to file with the record in this case a certificate to the effect that the question was presented to this court in the above-entitled action; that the act of the legislature of the State of Mississippi known as chapter 111 of the laws of this State, approved March 8th, 1888, *are* in violation of and in contravention to subdivisions 3, 7, and 18 of section 8, article 1; section 2, article 6; section 1, article 14 (amendment), respectively, of the Constitution of the United States, and also the act of the Congress of the United States, approved July 24th, 1866, now known as title 65 of the Revised Statutes of the United States, and that the decision of said questions by this court is necessary to the determination of said action, and that said questions were actually decided in this court in its determination of said action.

Dated February 1st, 1894.

MORDECAI & GADSDEN,
R. S. GUERNSEY,
BRAME & ALEXANDER,
Attorneys for Postal Telegraph Cable Company, Plaintiff in Error.

Endorsed: Motion for certificate of Federal question. State of Mississippi. In supreme court. Filed Feb'y 1, 1894. Oliver Clifton, clerk, by C. C. Campbell, D. C.

27 STATE OF MISSISSIPPI:

In the Supreme Court.

POSTAL TELEGRAPH CABLE COMPANY, Plaintiff in Error,
vs.
WIRT ADAMS, Revenue Agent of the State of Mississippi, Defendant in Error.

The foregoing motion having been presented, it is hereby ordered that the clerk of this court be, and he is hereby, directed and instructed to make a certificate under the seal of this court and to file the same with the record in this case, and that said certificate shall be to the effect that in said action a Federal question was presented for decision to this court, to wit, the question as to whether the act of the legislature of the State of Mississippi known as chapter 3 of the laws of said State, approved March 8th, 1888, *are* in violation of and in contravention to subdivisions 3, 7, and 18 of section 8, article 1; section 2, article 6; section 1, article 14 (amendment), respectively, of the Constitution of the United States, and also the act of the Congress of the United States, approved July 24th, 1866, now known as title 65 of the Revised States of the United States; that the said act of the legislature of the State of Mississippi *were* claimed by the said Postal Telegraph Cable Company, plaintiff in error, both in the court below as well as in this court, to be in conflict with said before-specified sections of the Constitution of the United States, and that the decision of this court was in favor of the validity of said act, and that the decision of said questions was necessary to the determination of this action in this court, and that said questions were actually decided by this court in the decision made by it in said action, and that the judgment in said action as rendered in this court could not have been given without deciding this question.

Dated Jackson, Miss., Feb. 1st, 1894.

J. A. P. CAMPBELL,
Chief Justice of the Supreme Court of Mississippi.

Endorsed: State of Mississippi. In the supreme court. Order for certificate of Federal question. Filed Feb'y 1, 1894. Oliver Clifton, clerk, by C. C. Campbell, D. C.

STATE OF MISSISSIPPI:

In the Supreme Court.

THE POSTAL TELEGRAPH CABLE COMPANY, Plaintiff in Error,
vs.
WIRT ADAMS, Revenue Agent of the State of Mississippi, Defendant in Error.

I, Oliver Clifton, clerk of the supreme court of Mississippi, do hereby certify that upon the first day of February, 1894, the following order was filed in the supreme court of the State of Mississippi in the above-entitled action, to wit:

"The foregoing motion having been presented, it is hereby ordered that the clerk of this court be, and he is hereby, directed and instructed to make a certificate under the seal of this court and to file the same with the record in this case, and that said certificate shall be to the effect that in said action a Federal question was presented for decision in this court, to wit, the question as to whether the act of the legislature of the State of Mississippi known as chapter 3 of the laws of said State, approved March 8th, 1888, *are* in violation of and in contravention to subdivisions 3, 7, and 18 of section 8, article 1; section 2, article 6; section 1, article 14 (amendment), respectively, of the Constitution of the United States, and also the act of the Congress of the United States, approved July 24th, 1866,
28 now known as title 65 of the Revised Statutes of the United States; that said act of the legislature of the State of Mississippi *were* claimed by the said Postal Telegraph Cable Company, plaintiff in error, both in the court below as well as in this court, to be in conflict with said before-specified sections of the Constitution of the United States, and that the decision of this court was in favor of the validity of said act, and that the decision of said questions was necessary to the determination of this action in this court, and that said questions were actually decided by this court in the decision made by it in said action, and that the judgment in said action as rendered in this court could not have been given without deciding this question."

Dated Jackson, Miss., Feb. 1st, 1894.

J. A. P. CAMPBELL,
Chief Justice of the Supreme Court of Mississippi."

In witness whereof I have hereunto set my hand and seal of said court, at Jackson, Miss., this 1st day of February, 1894.

OLIVER CLIFTON,
[SEAL.] *Clerk of Supreme Court of Mississippi.*
By C. C. CAMPBELL, *D. C.*

Endorsed: State of Mississippi. In the supreme court. Certificate of Federal question. Filed Feb'y 1, 1894. Oliver Clifton, clerk, by C. C. Campbell, D. C.

And on the 1st day of February, 1894, there was filed in the office of the clerk of said supreme court of Mississippi the writ of error, Exhibit "A" thereto, order allowing writ of error, and assignments of error in words and figures following, to wit:

STATE OF MISSISSIPPI:

In the Supreme Court.

THE POSTAL TELEGRAPH CABLE COMPANY, Plaintiff in Error,
vs.
WIRT ADAMS, Revenue Agent of the State of Mississippi, Defendant in Error.

To the honorable the chief justice and associate justices of the supreme court of the State of Mississippi:

Now comes your petitioner, The Postal Telegraph Cable Company, the plaintiff in error in the above-entitled action, and petitions for a writ of error from the final decision of the supreme court of the State of Mississippi in the above-entitled action heretofore made on the 4th day of December, 1893, and prays that said writ of error may be allowed, and that a transcript of the record and proceedings upon which said order or decree was made, duly authenticated, may be sent to the said the Supreme Court of the United States, and herewith files the following assignments of error, which are intended to be urged upon the hearing of said cause in said Supreme Court of the United States, to wit:

1. The supreme court of Mississippi erred in sustaining the demurrer of plaintiff below to defendant's special pleas.

2. The said court erred in entering judgment in favor of plaintiff below.

3. The action sought to be maintained by the plaintiff below is in contravention to the Constitution and laws of the United States.

4. The act of the legislature of the State of Mississippi, chapter 3 of the Laws of said State, approved March 8th, 1888, upon which this action is sought to be maintained, a copy of which is hereto annexed and marked Exhibit "A," is unconstitutional and void in so far as it seeks to impose the privilege tax sued for, being in contravention to the Constitution and laws of the United States.

29 5. Said act of the legislature imposing a privilege tax on plaintiff in error is void because it is an attempt by the State of Mississippi to regulate interstate commerce, in violation of clause 3, section 8, article 1, of the Constitution of the United States.

6. The said privilege tax is attempted to be collected in this case in violation of the act of Congress of July 24th, 1866, now title 65 of the Revised Statutes of the United States, and is for that reason null and void.

7. That said privilege tax is a restraint upon the duly authorized agent of the Government in the transaction of Government business.

8. Because the court erred in holding, "The State may tax the exercise of its franchises with her borders and under the sheltering protection of her laws and government, and no foreign corporation may arrogantly assume any superiority over her domestic corporations. The privilege tax, the tax on the business, the occupation, the tax on the exercise of franchises, may be incidentally burdensome to interstate commerce. It does affect the business somewhat

and inevitably; but so does an ad valorem tax on the property employed in such commerce. It subtracts that much from the sum total engaged in the traffic. So does the tax on gross receipts, as in the case of State tax on railway gross receipts, 15 Wall. So does the tax for the privilege of exercising its franchises by a railroad company in any State, ascertainable and determinable by the amount of its gross transportation receipts, sealed as required in Maine *vs.* Grand Trunk Railway Co., 142 U. S. Every tax is a burden and to the extent imposed is an interference with the pursuit or business on which it is laid. If the business is partly interstate, then that commerce is incidentally affected and interferred with by every tax of any nature whatever that may be levied on it."

9. Because the court erred in holding, "That in the case at bar there is no direct burden upon interstate commerce. There is no further interference with it than will be found necessarily to result from the imposition of any burden of taxation in any shape."

10. Because the court erred in holding, "In the case at bar there is no taxation of messages, interstate or other; there is no exclusion or attempted exclusion by State law of a governmental agency or a foreign corporation partially engaged in interstate commerce. There is no taxation which interferes with, interrupts, or burdens interstate commerce."

11. Because the court erred in holding that "because the tax sought to be imposed herein is not in excess of the amount which might have been imposed by an ad valorem tax that the same was therefore constitutional."

12. Because the court should have held that by said act of the legislature of the State of Mississippi the attempt being made to assess and tax upon the property and business of this defendant for public purposes at a greater rate than is assessed and taxed on property of individuals in the State of Mississippi, and that such assessment and taxation not being according to the value of said property and being at a much greater rate of taxation for public purposes than other monied capital or property employed or invested in commercial business and employed in other commercial operations within the State of Mississippi is assessed or taxed for public purposes, and said taxes being unequally imposed and inequitable, said act of the legislature of the State of Mississippi is in violation of the constitution of the State of Mississippi as well as the Constitution of the United States and the laws of Congress.

13. Because the court should have held that under and by virtue of article XII of the Constitution of the State of Mississippi, providing that all property must be assessed and taxed according to its value for purposes of revenue, and that taxes must be uniform, said act of the legislature of the State of Mississippi is in contravention to and in violation of said article XII of the constitution of the State of Mississippi.

14. Because the court should have held that, this defendant being assessed upon all of its property according to its value in the State of Mississippi by the railroad commissioner of said State, and being

taxed upon said value for State and county purposes, said act of the legislature of the State of Mississippi is unconstitutional, *ultra vires*, and void.

15. Because the court should have held that, under the laws of the State of Mississippi, this defendant being subject to laws which require the payment of specific license fees and charges in cities and towns for the privilege of doing its business therein in addition to the tax upon property, and said license charges and fees often exceeding more than 10 % of the value of the property of the defendant located within the limits of such city or town within the State of Mississippi, said act of the legislature of the State of Mississippi is unconstitutional, *ultra vires*, and void.

16. Because the court should have held that, this action being brought to recover a privilege or a license tax imposed for the purposes of revenue in addition to the taxation upon the value of the property of defendant, and in addition to annual local license charges and fees imposed by cities and towns upon the defendant for the purpose of revenue, said act of the legislature of the State of Mississippi is unconstitutional, *ultra vires*, and void.

17. Because the court should have held that said act of the legislature of the State of Mississippi imposed and exacted an illegal and unconstitutional tax from this defendant, and was for no other purpose or object, and is void, and the defendant cannot be made liable for any penalty for neglect to comply with the provisions of said act.

18. Because said court should have held that, the property of like nature to defendant's which *are* used by domestic corporations within State of Mississippi not being taxed or assessed or charged for privileges in the manner or form or nature or extent as is this defendant, said act of the legislature of the State of Mississippi is unconstitutional, *ultra vires*, and void.

19. Because said court should have held that, there being a large number of miles of wire similar to those of defendant used as electrical conductors for telephone and electric light and power purposes within the State of Mississippi, and the same not being taxed or assessed or charged by law for privileges in the manner or form or nature or extent as is this defendant, said act of the legislature of the State of Mississippi is unconstitutional, *ultra vires*, and void.

20. Because said court should have held that, said taxes claimed of the defendant not being imposed upon it or its property or business in the same manner or form or nature as are taxed, imposed, or required to be paid by individuals upon property or business within the State of Mississippi, said act of the legislature of the State of Mississippi is unconstitutional, *ultra vires*, and void.

21. Because said court should have held that, the telegraph wires used by this defendant not exceeding in value the sum of fifteen dollars per mile for each mile thereof, and property of like nature and use belonging to other corporations in the State of Mississippi being of much more value than that of the defendant, and yet being assessed and taxed to the extent only and in manner and amount as

is that in use by the defendant, said act of the legislature of the State of Mississippi is unconstitutional, *ultra vires*, and void.

22. Because the court should have held that said license charge or privilege tax in the complaint named only applies to telegraph lines and wires along railroad lines which are in use by railroads and belong to or are operated in connection with the railroad business, and that the same cannot be made to apply to the telegraph lines of this defendant.

31 23. Because the court should have held that, none of the lines of defendant being a part of or belonging to any railroad lines and not being connected in any manner with said railroads or their business, and said lines of defendant being only along the common public highways in said State, said license charge should not have been imposed upon the defendant, and is unconstitutional, *ultra vires*, and void.

24. Because the court should have held that said tax and charge upon the telegraph lines of defendant in the State of Mississippi is a restraint upon the use of the post-roads of the United States and is an infringement of the legislative domain of Congress and is in violation of clause 3, section 8, article 1 of the Constitution of the United States, and is also in violation of the act of Congress of July, 1866, now known as title 65 of the Revised Statutes of the United States.

25. Because said court should have held that the matters and sums claimed in the complaint are a restraint upon the franchises of the defendant in the State of Mississippi and are a restraint upon trade and interstate commerce and communication by telegraph between the States and *is* a restraint upon the duly authorized agent of the Government in the transaction of Government business.

26. Because the court should have held that the enforcement of said claims in the declaration mentioned would be against the public policy of the State of Mississippi and against the public policy of the United States.

27. Because the court should have held that said act of the State of Mississippi did not afford the petitioner the equal protection of the laws that are applied to individuals upon taxation of property.

28. Because the court should have held that said act of the legislature of the State of Mississippi, to wit, the act of the legislature of the State of Mississippi known as chapter 3 of the laws of said State, approved March 8th, 1888, *are* in violation of and in contravention of subdivision 7, section 8, article 1, of the Constitution of the United States.

29. Because the court should have held that said act of the legislature of the State of Mississippi, to wit, the act of the legislature of the State of Mississippi known as chapter 3 of the laws of said State, approved March 8th, 1888, *are* in violation of and in contravention to subdivision 18, section 8, article 1, and section 2, arti- VI, of the Constitution of the United States.

30. Because the court should have held that said act of the legislature of the State of Mississippi, to wit, the act of the legislature

of the State of Mississippi known as chapter 3 of the laws of said State, approved March 8th, 1888, *are* in violation of and in contravention to section 1, article XIV (amendment), of the Constitution of the United States.

32. The circuit court of the first district of Hinds county, Mississippi, and the supreme court of said State had no jurisdiction to proceed with the hearing of this cause and render judgment against defendant below, because, as the record shows, this case was in due time regularly and properly removed to the circuit court of the United States in and for the southern district of Mississippi.

32. The court below had no jurisdiction or authority to render the judgment complained of.

And your petitioner hereto annexes and makes a part of this petition the act of the legislature of the State of Mississippi being known as chapter 3 of the laws of said State, approved March 8th, 1888, and marked "Exhibit A," and attached hereto.

Your petitioner shows that said judgment of the supreme court of the State of Mississippi in the said action is a final judgment in said suit in the highest court of said State of Mississippi in which a decision in said suit can be had, and that in said suit there was drawn in question the validity of a statute of said State of Mississippi, to wit, the act of the legislature of the State of
32 Mississippi known as chapter 3 of the laws of said State, approved March 8th, 1888, on the ground *that* said act being repugnant to the Constitution of the United States, to wit, clauses 3, 7, and 18, section 8, article I; section 2, article VI; section 1, article XIV (amendment), of the Constitution of the United States, as well as the act of Congress of the United States passed July 24th, 1866, now known as title 65 of the Revised Statutes of the United States, and that the decision aforesaid of the supreme court of the State of Mississippi is in favor of the validity of said statute; all of which will more fully appear from the record in said suit now on file in the office of the clerk of this court, and to which record reference is hereby made.

And your petitioner further shows that said act of the General Assembly of the State of Mississippi, to wit, the act of the legislature of the State of Mississippi known as chapter 3 of the laws of said State, approved March 8th, 1888, *are* in violation of and in contravention to clauses 3, 7, and 18, section 8, article I; section 2, article VI; section 1, article XIV (amendment), of the Constitution of the United States and the act of Congress of the United States approved July 24th, 1866, now known as title 65 of the Revised Statutes of the United States.

Wherefore your petitioner prays that a writ of error be issued in said suit from the Supreme Court of the United States to the supreme court of the State of Mississippi to review said judgment of the supreme court of the State of Mississippi in accordance with law and with the usual usage, custom, and practice of the Supreme Court of the United States; and this petitioner will ever pray.

MORDECAI & GADSDEN,
R. S. GUERNSEY,
BRAME & ALEXANDER,
Attorneys for the Postal Telegraph Cable Company, Petitioner.

STATE OF MISSISSIPPI, }
County of Hinds. }

Personally appeared before me —— ——, who, being duly sworn, says that he is manager of the defendant, The Postal Telegraph Cable Company, at the city of Jackson, in the State of Mississippi; that he has read the foregoing petition and knows the contents thereof, and that the facts therein set up are true.

WM. LYLE,
M'g'r Postal Cable Co.

Sworn to and subscribed before me this 1st day of February, 1894.

[SEAL.] E. M. PARKER,
Notary Public.

Endorsed: State of Mississippi. In the supreme court. Petition for writ of error, assignments of error, and exhibit. Filed Feb'y 1st, 1894. Oliver Clifton, clerk, by C. C. Campbell, D. C.

EXHIBIT A TO PETITION.

Chapter 3.

An act to amend sections 557 and 585, Code of 1880, so as to increase the public revenue and provide for the faithful collection of the same.

SECTION 1. Be it enacted by the legislature of the State of Mississippi, That section 585 of the Code of 1880, be and is hereby amended as follows:

On each express company	$3,000 00
On each telegraph company operating 1,000 miles or more, which shall be in lieu of other State, county and municipal taxes	3,000 00
On each telegraph company operating less than 1,000 miles of wire, for each mile of wire	1 00
33 On each fire insurance company	1,000 00
On each life insurance company	750 00
On each accident insurance company	250 00
On each live stock and accident insurance company	100 00

And such accident insurance companies may do business in this State by complying with all the laws relating to insurance companies, except they shall not be required to make any deposit; provided, they shall insure against accidents to persons alone.

On each insurance agent in city or town of 5,000 inhabitants or more	40 00
On each insurance agent in city or town of more than 2,000 inhabitants and less than 5,000 inhabitants	25 00

On each insurance agent in city or town of less than 2,000 inhabitants, soliciting or writing insurance in more than one town or county	20 00
On all other insurance agents	15 00

Any person who solicits insurance, or who makes or transmits any application for insurance or collects any premium, or delivers any policy, except as the employee of a licensed agent, shall be subject to this tax, and the auditor of public accounts, before issuing the certificate required by section 1075 of the Code of 1880, shall have the certificate of the tax-collector of the county where the agency is established, that the tax required by law has been paid; provided, that the tax herein required shall only be payable at the expiration of license issued under the laws heretofore in force.

On each Jenny Lind table, pool table, billiard table, nine or ten pin alley, or any similar contrivance kept for public use, whether a fee is charged for such use or not, in cities or towns of less than 2,000 inhabitants	25 00
On same in cities or towns of 2,000 inhabitants	50 00
On same in cities or towns of 5,000 or more inhabitants	75 00
On each wharf-boat	100 00
On each trading boat dealing only in provisions, produce, and provender	50 00
On all other trading boats	200 00
On each tavern or hotel with capacity for twenty-five guests, in city or town of five thousand or more inhabitants	75 00
On the same with capacity for less number of guests	40 00
On each tavern or hotel in city or town of 2,000 and not more than 5,000 inhabitants, with the capacity for twenty-five guests	40 00
On same less capacity	20 00
On each tavern or hotel in city or town of less than 2,000 inhabitants	10 00
On each private boarding-house in a city or town not boarding students exclusively	5 00
On each railroad eating-house where two or more trains stop daily for meals	125 00
On same, where not more than one train stops daily for meals, provided, that no hotel or eating-house shall be required to pay more than one of said taxes, but when subject to both, shall pay the highest	.....
On each restaurant in city or town of more than 2,000 inhabitants	10 00
Same, in city or town of less than 2,000 inhabitants, and more than 1,000 inhabitants	20 00
In towns having less than 1,000 inhabitants	10 00

On each eating-house where luncheon is sold, the same not being a restaurant..... 5 00

34 On each tented show, circus or menagerie, for each day or part of a day's performance, whether an admission fee is charged or not, to be paid before any performance can be given..... 150 00

On each side show..... 50 00

On each show, exhibition, concert, or other performance, where a fee is charged for admission, and not devoted exclusively to religious, benevolent or educational purposes, for each day or part of it..... 5 00

On each fair or festival, proceeds of which are not devoted exclusively to religious, benevolent or educational purposes..... 5 00

On each room or hall used as a theatre or opera-house for public exhibition or performances, in city or town having more than 1,000 inhabitants for each year... 100 00

On same, in city or town having less than four and more than 2,000 inhabitants for each year..... 50 00

On same, in city or town having two thousand or less, and more than one thousand inhabitants for each year..... 25 00

On same, in city or town having 1,000 inhabitants, or less, for each year..... 10 00

On each store where the stock never exceeds in value $2,000..... 10 00

On each store where the stock sometimes exceeds $2,000, but never thirty-five hundred dollars..... 15 00

On each store where the stock sometimes exceeds thirty-five hundred, but never exceeds five thousand dollars. 20 00

On each store where the stock sometimes exceeds five thousand dollars, but not seven thousand dollars.... 25 00

On each store where the stock sometimes exceeds more than seven thousand dollars, but not more than ten thousand..... 30 00

On each store where the stock is ten thousand, but not more than twelve thousand dollars..... 35 00

On each store where the stock is sometimes twelve thousand dollars but not more than fifteen thousand dollars..... 40 00

On each store with a stock ranging from fifteen thousand to twenty thousand dollars..... 50 00

On each store with a stock varying from twenty thousand to twenty-five thousand dollars..... 60 00

On each store with stock varying from twenty-five thousand dollars to thirty-five thousand dollars..... 85 00

On each store with a stock of thirty-five thousand dollars..... 100 00

On each store where a stock is sometimes carried of fifty thousand dollars or more..... 150 00

On each auctioneer in each town of not more than one thousand inhabitants..... 5 00
Same, in each city or town of more than one thousand and not more than three thousand inhabitants..... 20 00
Same, in city or town of more than three thousand, and less than five thousand inhabitants 25 00
Same, in city and town of more than five thousand inhabitants..... 30 00
Each peddler on foot for each county..... 20 00
Each peddler with one horse or mule or animal, for each county..... 25 00
Each peddler with one horse or mule, or other animal, or wagon or other wheeled vehicle, for each county... 30 00
Each peddler with a wagon and two horses or mules or other animals, for each county..... 40 00
Each peddler of tinware and pottery not manufactured by himself and on foot..... 5 00
Each peddler of tinware and pottery not manufactured by himself, with wagon 10 00
On each president, cotton-broker, or factor engaged in buying or selling cotton and not licensed as a merchant 20 00
On each person engaged in buying or selling cotton for himself, or as an agent or employee of another. 20 00
35 On each public cotton-weigher at a place where less than two thousand bales are weighed in a year. 10 00
Same at a place where more than two thousand and less than four thousand bales are weighed in a year..... 15 00
Same where more than four thousand and less than five thousand bales are weighed in a year..... 20 00
Same where more than five thousand but less than eight thousand bales are weighed in one year..... 25 00
Same where more than eight but less than ten thousand bales are weighed in one year..... 30 00
Same where more than ten thousand bales are weighed in one year..... 35 00

And the number of bales meant is the whole number weighed in the city, town or shipping point, and not what are weighed by one person.

Each person or merchant dealing in coal, not charcoal, in a town of 1,000 inhabitants or more, not having a public coal yard..... 10 00
On each coal dealer..... 10 00
Each brewery or establishment for the manufacturing or bottling of ale, soda or other drinks..... 20 00
Each soda fountain 10 00

Each drug store shall be subject to the same tax as other stores and shall obtain license in the same manner, and may sell vinous or spirituous liquors as other dealers may.

On each person selling vinous or spirituous liquors or mixture of which vinous or spirituous liquors are the principal ingredient in less quantities than five gallons and not less than one gallon	150 00
On each person selling such liquors in quantities not less than one gallon and more than five gallons	300 00
Each pawnbroker or firm of such	100 00
Each broker keeping an office as such and engaged in buying or selling notes, bonds or other securities	75 00
Each practicing lawyer whether practicing alone or associated with others	10 00
Each practicing dentist whether alone or associated with others	10 00
Each licensed physician engaged in practice	10 00
Each gas company in city or town of less than four thousand inhabitants	50 00
Same in city or town of more than four thousand inhabitants	100 00
On each toll-bridge	25 00
On each steam-ferry on the Mississippi river which has either terminus in or near a city or town of five thousand inhabitants	150 00
On same in or near a city or town of less than five thousand inhabitants	75 00
On each wood yard in a town of one thousand and over twenty-five hundred inhabitants	5 00
Over twenty-five hundred and not exceeding five thousand inhabitants	10 00
Over 5,000 and under 7,500 inhabitants	15 00
Over 7,500 and under ten thousand	20 00
Over ten thousand inhabitants	25 00
On each dealer in railroad tickets except authorized agents and employees of railroads	25 00
On each band of gypsies—or traveling band commonly known as gypsies—trading horses or telling fortunes, for each county	25 00
On each solicitor for the enlargement of pictures	5 00
Each public cotton-seed buyer	10 00
36 Each public gin ginning over 300 bales of cotton per annum, for hire	25 00
Each public saw-mill, sawing not less than 10,000 feet of lumber, per day, for year	10 00
On each dealer in ale, beer or other malt liquors in a city, or town of five thousand or more inhabitants, and not licensed to retail vinous or spirituous liquors	100 00
On same in city or town of over two thousand inhabitants, and under five thousand inhabitants	50 00
On all other such dealers	25 00
On each cotton compress company of 20,000 bales capacity	50 00

On each cotton compress company of 20,000 to 30,000 bales capacity	100 00
On each cotton compress company of 30,000 or more bales	150 00
On each agency for sewing machines	50 00
On each agent for sewing machines of each company	10 00
On each photograph gallery in each town of over one thousand inhabitants	10 00
On same in town of less than one thousand inhabitants	5 00
On each traveling photograph gallery going from county to county, for State	20 00
On each livery, feed or sale stable in towns of less than two thousand inhabitants	10 00
On same in city or town of more than two and less than three thousand inhabitants	15 00
On same in city or town of more than three thousand and less than five thousand inhabitants	30 00
On same in city or town of over five thousand inhabitants, and less than ten thousand inhabitants	40 00
On same in city or town of more than 10,000 inhabitants	60 00
On each transient vendor of horses or mules, whether owner or agent or employee, to be paid for in one county only and not to be required to pay in any other county into which he may go	30 00
On each real-estate agent	10 00
On each hack of stage line, running from one town or depot to another, and not being connected with the business of a licensed livery-stable paying the foregoing tax	10 00
On each omnibus, hack or carriage kept and operated for public use in city or town of two thousand or more inhabitants	5 00
On same in city or town of less than 2,000 inhabitants	2 50
On each street-car company	25 00
On each trading car traveling 250 miles or more	150 00
On same traveling less than 250 miles and more than 150	100 00
On same traveling less than 150 miles	50 00
On each transient vendor of jewelry, whether it is offered for sale in the store of some present dealer or not	50 00
On each bank of deposit or discount with more than ten thousand and not more than twenty-five thousand dollars of capital stock or assets	250 00
On same having more than twenty-five thousand dollars and not more than $50,000 of capital stock or assets	500 00
On same having more than fifty thousand and not more than seventy-five thousand dollars of capital stock or assets	750 00

	On same having more than $75,000 and not more than $100,000 of capital stock or assets	1,000 00
	On same having more than $100,000 and not more than $125,000 capital stock or assets	1,250 00
	On same having more than $125,000 and not more than $150,000 of capital stock or assets	1,500 00
	On same having more than $150,000 of capital stock or assets and not more than $200,000 capital stock or assets	1,750 00
37	On all other banks of deposit or discount having more than two hundred thousand dollars of capital stock or assets	2,000 00

And the privilege taxes imposed upon and paid by such banks of deposit or discount shall be in lieu of all other taxes, State, county and municipal, upon the shares and assets of said banks; provided further, that all national banks in this State organized and chartered under the national banking act, but which are not liable to a privilege tax imposed by the State, may accept the provisions of this act, and pay the proper tax herein fixed according to the amount of the capital stock and assets of such national bank respectively; and such national banks so paying the proper privilege tax as hereinabove provided for other banks of deposit or discount, shall thereby become and be exempt from all other State, county and municipal taxes upon the stock or shares thereof, respectively; provided further, that national banks failing to accept the provisions of this act, and failing or refusing to pay the proper privilege tax as hereinabove provided, shall be liable to State, county and municipal taxation as now provided by law and by the terms of the national banking acts and laws.

	On each person or firm selling patent medicines except licensed merchants or druggists	25 00
	On each shooting gallery or target gun or similar contrivance by whatsoever name called	25 00
	On each cane-rack, knife-rack or any similar contrivance, by whatsoever name called, kept for public use	25 00
	On each ice factory	25 00
	On each cotton-seed-oil mill where the machinery and buildings represent a capital of not less than twenty thousand and not more than thirty thousand dollars	100 00
	Where such capital etc., is not less than thirty thousand dollars nor more than fifty thousand dollars	150 00
	Where such capital, etc., is more than fifty thousand and less than seventy-five thousand dollars	150 00
	Where it is more than seventy-five thousand dollars	200 00

On each building and loan association, which loans money exclusively to its members, whose stock or share represents monthly payments not exceeding five hundred dollars	25 00
On same whose stock or shares represents monthly payments of five hundred dollars or more, or less than $1,500	50 00
On same whose stock or shares represents monthly payments of fifteen hundred dollars or more, and less than $2,000	100 00
On same whose stock or shares represents monthly payments of $2,500 or more, and less than three thousand dollars	150 00
On same whose stock or shares represents monthly payments of three thousand dollars or more	200 00

Which shall be in lieu of all other taxes, whether State, county or municipal, except on real estate; provided this clause in relation to privilege taxes on building and loan associations shall not apply to banking associations.

On each barber shop in town or city of one thousand inhabitants or more	5 00
On each telephone company	75 00
And in addition thereto on each telephone exchange with twenty-five or less subscribers	5 00
On same with more than twenty-five subscribers or less than fifty subscribers	10 00
On same with fifty subscribers or more, and less than twenty subscribers	15 00
On same with 75 subscribers or more and less than 100	20 00
38 On same with one hundred subscribers or more, and less than one hundred and fifty subscribers	30 00
On same with one hundred and fifty subscribers or more, and less than two hundred	40 00
On same with more than two hundred subscribers	50 00

And this shall be in lieu of all other taxes of telephone companies and telephone exchanges.

On each skating rink in city or town of more than a thousand inhabitants	20 00
On same in city or town of less than three thousand inhabitants	10 00
On each lumber yard or dealer in lumber whose annual sales aggregate five hundred thousand feet or more, and less than one million feet	10 00
On same whose annual sales aggregate one million feet or more	25 00

On each brick yard where brick are moulded by machinery	20 00
On each meat market in town or city of one thousand or more inhabitants	5 00
On each person or firm dealing in pistols or dirks, or sword canes, or other deadly weapons (shotguns and rifles excepted)	100 00
On each transient vendor of bed springs for each county	5 00
On each dealer in bed springs in this State who shall manufacture the same and sell them himself or by agent	25 00
On each vendor of oleomargarine or similarly manufactured butter	50 00
On each transient vendor of fruit trees or grapevines in each county	5 00
On each lightning-rod agent in each county	10 00
On each transient vendor of stoves, iron ranges or clocks in each county	25 00
On each wagon so used	25 00
On each agent for the sale of tombstones	10 00
On each book agent	5 00

Provided, that the tax on book agents shall not apply to any agent or colporteur of any religious publishing house or Bible society; and provided further, books of no other nature than religious books, tracts and other religious literature are sold by said agents.

In any case where it is inconvenient to obtain any of the licenses provided for in this section from the sheriff of any county, the same may be obtained directly from the auditor of public accounts, upon payment into the State treasury upon the pay warrant of the person trading or selling goods or merchandise shall be required to pay more than one tax for that privilege, but when it may appear that such person may be liable to more than one tax as such privilege tax, the greater sum shall be collected, and all laws now in force and not changed by this act, relating to levy, collections and payment of privilege taxes, and particularly section 586, m., 587, 589, 590, 591, 592, 593, 594, 595 and 596, shall remain in full force and effect.

Sec. 2. Be it further enacted, That section 557 of the Code of 1880 be extended so as to include liability for all privilege taxes which the collector might collect, and he may be proceeded against by the State, through its proper officers, as well as by citizens, and it shall be the duty of the tax-collectors of the several counties to arrest and make complaint against all persons liable thereto, whom they shall find doing business without the proper privilege licenses, and they shall require all persons liable to pay a privilege tax, to exhibit their license; and if any person shall fail or refuse to exhibit his privilege license to any person, on demand, he shall be deemed liable to all the pains and penalties of doing business without li-

censes, and all contracts made by him shall not be enforced in any court of this State.

39 SEC. 3. Be it further enacted, That the auditor of public accounts may adopt such a system and prescribe such forms of official papers to be used, and reports to be made, not inconsistent with laws, as he may consider best adapted to secure the faithful collections and prompt payment into the treasury of the privilege taxes to be collected by the tax-collectors in the several counties, and such regulations shall be conformed to by the collectors.

SEC. 4. Be it further enacted, That this shall not be so construed as to require those persons who have already paid taxes on the privileges herein mentioned to pay the privilege taxes required by this act until after the expiration of the license now held by them.

SEC. 5. Be it further enacted, That the State tax is hereby fixed at three and one-half mills for each of the years 1888 and 1889, the proceeds thereof to be for the general fund of the State, in addition to the tax of one-half mill for each of said years 1888 and 1889, for the payment of the interest on certain bonds issued by the treasurer of the State of Mississippi, under and by virtue of an act entitled An act to authorize the issuance of bonds to raise money for the cancellation of the indebtedness of the State, etc., approved March 18, 1886, as fixed and levied in such act, and the said tax, as aforesaid, is hereby levied and imposed, and the same shall be the only State tax levied and collected for the purposes aforesaid; and the boards of supervisors are hereby prohibited from levying taxes, which, added to the State tax, will exceed thirteen dollars on each thousand dollars worth of property; provided, that to meet any outstanding indebtedness the amount herein provided may exceed thirteen dollars on each thousand, but in no case to exceed fifteen dollars on the thousand; provided further, that nothing in this act shall be construed as affecting the right of any county to pay any outstanding indebtedness, and which they are required to pay by the judgment of any court of record, or by any special act of the legislature, or to levy any tax which any county may now be specially authorized by law to levy; provided, that the board of supervisors of Jefferson county may, if necessary, levy a tax for all purposes which, added to the State tax, shall not exceed 17 mills, and the county of Amite may levy a tax of one mill additional for school purposes.

SEC. 6. Be it further enacted, That all acts and parts of acts in conflict with this act, be and the same are hereby repealed; but no other, and that this act take effect and be in force from and after its passage.

Approved, March 8, 1888.

Endorsed: Filed Feb'y 1, 1894. Oliver Clitton, clerk, by C. C. Campbell, D. C.

STATE OF MISSISSIPPI:

In the Supreme Court.

THE POSTAL TELEGRAPH CABLE COMPANY, Plaintiff in Error,
vs.
WIRT ADAMS, Revenue Agent of the State of Mississippi, Defendant in Error.

Desiring to give the petitioner an opportunity to test in the Supreme Court of the United States the question presented in the foregoing petition—

It is hereby ordered that a writ of error be, and is hereby, allowed to said court, and that the same be made a supersedeas, the bond in the penal sum of $2,147.11, herewith presented, being approved.

In witness whereof I have hereunto set my hand this first day of February, 1894.

J. A. P. CAMPBELL,
Chief Justice of the Supreme Court of the State of Mississippi.

Endorsed: Order allowing writ of error. Filed Feb'y 1, 1894. Oliver Clifton, clerk, by C. C. Campbell, D. C.

40 STATE OF MISSISSIPPI:

In the Supreme Court of the United States.

THE POSTAL TELEGRAPH CABLE COMPANY, Plaintiff in Error,
vs.
WIRT ADAMS, Revenue Agent of the State of Mississippi, Defendant in Error.

Now comes the said plaintiff in error, the said Postal Telegraph Cable Company, by Mordecai & Gadsden, R. S. Guernsey, and Brame & Alexander, its attorneys, and makes this its assignments of error in the above-entitled action, and assigns and specifies the following errors committed upon the trial of said action:

1. The supreme court of Mississippi erred in sustaining the demurrer of plaintiff below to defendant's special pleas.

2. The said court erred in entering judgment in favor of plaintiff below.

3. The action sought to be maintained by the plaintiff below is in contravention to the Constitution and laws of the United States.

4. The act of the legislature of the State of Mississippi, chapter 3 of the laws of said State, approved March 8th, 1888, upon which this action is sought to be maintained, a copy of which is hereto annexed and marked Exhibit "A," is unconstitutional and void in so far as it seeks to impose the privilege tax sued, being in contravention to the Constitution and laws of the United States.

5. Said act of the legislature imposing a privilege tax on plaintiff in error is void because it is an attempt by the State of Missis-

sippi to regulate interstate commerce, in violation of clause 3, section 8, article 1, of the Constitution of the United States.

6. The said privilege tax is attempted to be collected in this case in violation of the act of Congress of July 24th, 1866, now title 65 of the Revised Statutes of the United States, and is for that reason null and void.

7. That said privilege tax is a restraint upon the duly authorized agent of the Government in the transaction of Government business.

8. Because the court erred in holding "the State may tax the exercise of its franchise within her borders and under the sheltering protection of her laws and government, and no foreign corporation may arrogantly assume any superiority over her domestic corporations. The privilege tax, the tax on business, the occupation, the tax on the exercise of franchises may be incidentally burdensome to interstate commerce. It does affect the business somewhat and inevitably; but so does an ad valorem tax on the property employed in such commerce. It subtracts that much from the sum total engaged in the traffic. So does the tax on gross receipts, as in the case of State tax on railway gross receipts, 15 Wall. So does the tax for the privilege of exercising its franchises by a railroad company in any State, ascertainable and determinable by the amount of its gross transportation receipts, sealed as required in Maine *ex.* Grand Trunk Railway Co., 142 U. S. Every tax is a burden and to the extent imposed is an interference with the pursuit of business upon which it is laid. If the business is partly interstate, then that commerce is incidentally affected and interfered with by every tax of any nature whatever that may be levied on it."

9. Because the court erred in holding "that in the case at bar there is no direct burden upon interstate commerce. There is no further interference with it than will be found necessarily to result from the imposition of any burden of taxation in any shape."

10. Because the court erred in holding that "in the case at bar there is no taxation of messages, interstate and other; there is no exclusion or attempted exclusion by State law of a governmental agency or a foreign corporation partially engaged in interstate commerce."

11. Because the court erred in holding that "because the tax sought to be imposed herein is not in excess of the amount which might have been imposed by an ad valorem tax that the same was therefore constitutional."

12. Because the court should have held that by said act of the legislature of the State of Mississippi the attempt being made to assess and tax upon the property and business of this defendant for public purposes at a greater rate than is assessed and taxed on property of individuals in the State of Mississippi, and that such assessment and taxation not being according to the value of said property and being at a much greater rate of taxation for public purposes than other moneyed capital or property employed or invested in commercial business and employed in other commercial operations within the State of Mississippi is assessed or taxed for

public purposes, and said taxes being unequally imposed and inequitable, said act of the legislature of the State of Mississippi is in violation of the constitution of the State of Mississippi as well as the Constitution of the United States and the laws of Congress.

13. Because the court should have held that under and by virtue of article XII of the constitution of the State of Mississippi, providing that all property must be assessed and taxed according to its value for purposes of revenue, and that taxes must be uniform, said act of the legislature of the State of Mississippi is in contravention to and in violation of said article XII of the constitution of the State of Mississippi.

14. Because the court should have held that this defendant being assessed upon all of its property according to its value in the State of Mississippi by the railroad commissioner of said State and being taxed upon said value for State and county purposes, said act of the legislature of the State of Mississippi is unconstitutional, *ultra vires*, and void.

15. Because the court should have held that under the laws of the State of Mississippi, this defendant being subject to laws which require the payment of specific license fees and charges in cities and towns for the privilege of doing its business therein, in addition to the tax upon property, and said license charges and fees often exceeding more than 10% of the value of the property of defendant located within the limits of such city and town within the State of Mississippi, said act of the legislature of the State of Mississippi is unconstitutional, *ultra vires*, and void.

16. Because the court should have held that this action being brought to recover a privilege tax or a license tax imposed for the purposes of revenue in addition to the taxation upon the value of the property of defendant, and in addition to annual local license charges and fees imposed by cities and towns upon the defendant for the purpose of revenue, said act of the legislature of the State of Mississippi is unconstitutional, *ultra vires*, and void.

17. Because the court should have held that said act of the legislature of the State of Mississippi imposed and exacted an illegal and unconstitutional tax from this defendant, and was for no other purpose or object, and is void, and the defendant cannot be made liable for any penalty for neglect to comply with the provisions of said act.

18. Because said court should have held that the property of like nature to defendant's which *are* used by domestic corporations within State of Mississippi not being taxed or assessed or charged for privileges in the manner of form or nature or extent as is this defendant, said act of the legislature of the State of Mississippi is unconstitutional, *ultra vires*, and void.

19. Because said court should have held that there being a large number of miles of wire similar to those of defendant used as electrical conductors for telephone and electric-light and electric-power purposes within the State of Mississippi, and the same not being taxed or assessed or charged by law *by law* for privileges in
42 the manner or form or nature or extent as is this defendant,

said act of the legislature of the State of Mississippi is unconstitutional, *ultra vires*, and void.

20. Because said court should have held that said taxes claimed of the defendant not being imposed upon it or its property or business in the same manner or form or nature as are taxed imposed or required to be paid by individuals upon property or business within the State of Mississippi, said act of the legislature of the State of Mississippi is unconstitutional, *ultra vires*, and void.

21. Because said court should have held that the telegraph wires used by this defendant not exceeding in value the sum of fifteen dollars per mile for each mile thereof and property of like nature and use belonging to other corporations in the State of Mississippi being of much more value than that of defendant and yet being assessed and taxed to the extent only and in the manner and amount as is that in use by the defendant, said act of the legislature of the State of Mississippi is unconstitutional, *ultra vires*, and void.

22. Because the court should have held that said license charge or privilege tax in the complaint named only applies to telegraph lines and wires along railroads lines which are in use by railroads and belong to or are operated in connection with the railroad business, and that the same cannot be made to apply to the telegraph lines of this defendant.

23. Because the court should have held that none of the lines of defendant being a part of or belonging to any railroad lines and not being connected in any manner with said railroads or their business and said lines of defendant being only along the common public highways in said State, said license charge should not have been imposed upon the defendant and is unconstitutional, *ultra vires*, and void.

24. Because the court should have held that said tax and charge upon the telegraph lines of defendant in the State of Mississippi is a restraint upon the use of the post-roads of the United States and is an infringement of the legislative domain of Congress, and is in violation of clause 3, section 8, article 1, of the Constitution of the United States, and is also in violation of the act of Congress of July, 1866, now known as title 65 of the Revised Statutes of the United States.

25. Because said court should have held that the matters and sums claimed in the complaint are a restraint upon the franchises of the defendant in the State of Mississippi and are a restraint upon trade and interstate commerce and communication by telegraph between the States and is a restraint upon the duly authorized agent of the Government in the transaction of Government business.

26. Because the court should have held that the enforcement of said claims in the declaration mentioned would be against the public policy of the State of Mississippi and against the public policy of the United States.

27. Because the court should have held that said act of the State of Mississippi did not afford the petitioner the equal protec-

tion of the laws that are applied to individuals upon taxation of property.

28. Because the court should have held that said act of the legislature of the State of Mississippi, to wit, the act of the legislature of the State of Mississippi known as chapter 3 of the laws of said State, approved March 8th, 1888, *are* in violation of and in contravention to subdivision 7, section 8, article 1, of the Constitution of the United States.

29. Because the court should have held that said act of the legislature of the State of Mississippi, to wit, the act of the legislature of the State of Mississippi known as chapter 3 of the laws of said State, approved March 8th, 1888, *are* in violation of and in contravention to subdivision 18, section 8, article 1, and section 2, article 6, of the Constitution of the United States.

43 30. Because the court should have held that said act of the legislature of the State of Mississippi, to wit, the act of the legislature of the State of Mississippi known as chapter 3 of the laws of said State approved March 8th, 1888, *are* in violation of and in contravention to section 1, article XIV (amendment), of the Constitution of the United States.

31. The circuit court of the first district of Hinds county, Mississippi, and the supreme court of said State had no jurisdiction to proceed with the hearing of this cause and render judgment against defendant below, because, as the record shows, this case was in due time regularly and properly removed to the circuit court of the United States in and for the southern district of Mississippi.

32. The court below had no jurisdiction or authority to render the judgment complained of.

Wherefore the said plaintiff in error, The Postal Telegraph Cable Company, by Mordecai & Gadsden, R. S. Guernsey, and Brame & Alexander, its attorneys, petitions and prays your honorable court that for reason of the errors hereinbefore specified and set forth the judgment entered in said action by the supreme court of the State of Mississippi be reversed; and this your petitioner will ever pray.

MORDECAI & GADSDEN,
R. S. GUERNSEY,
BRAME & ALEXANDER,
Attorneys for Petitioners.

Endorsed: State of Mississippi. In the supreme court. The Postal Telegraph Cable Company, plaintiff in error, *vs.* Wirt Adams, revenue agent of the State of Mississippi, defendant in error. Assignments of error. Filed Feb'y 1, 1894. Oliver Clifton, clerk, by C. C. Campbell, D. C. Mordecai & Gadsden, R. S. Guernsey, Brame & Alexander, attorneys for plaintiff in error.

And on the same day, to wit, on the first day of February, 1894, there was filed in the office of said clerk of the supreme court of Mississippi a writ of error bond, duly approved by the chief justice of said supreme court, in words and figures as follows, to wit:

Know all men by these presents that we, The Postal Telegraph Cable Company, a corporation, as principal, and R. W. Millsaps and E. M. Parker, as sureties, are held and firmly bound to Wirt Adams, revenue agent of the State of Mississippi, and to the State of Mississippi in the sum of two thousand one hundred and forty-seven dollars and fourteen cents ($2,147.14); for the payment of which we bind ourselves, our successors and assigns, jointly and severally, by these presents.

Signed by us and dated this 1st day of February, 1894.

The condition of the above obligation is such that whereas, on the 4th day of December, 1893, at a term of the supreme court of the State of Mississippi began on the third Monday of October, 1893, and still being held on the day aforesaid, in a certain suit then pending in said court, wherein The Postal Telegraph Cable Company was the appellant and Wirt Adams, revenue agent of the State of Mississippi, the appellee, the final decision was rendered by said supreme court adverse to appellant, and the said appellant feeling aggrieved by said decision and having asked and obtained an order granting a writ of error to review and reverse said decision rendered as aforesaid, which was granted by the chief justice of said supreme court of Mississippi on first day of February, 1894, returnable to the Supreme Court of the United States, to be held at Washington, D. C., on 1st day of March, 1894, and to operate as a supersedeas on the execution of a bond, payable and conditioned accord-
44 ing to law, in the penalty of two thousand one hundred forty-seven dollars and fourteen cents ($2,147.14), with two or three sufficient sureties:

Now, if the above-bound Postal Telegraph Cable Company shall prosecute its writ of error to effect and answer all damages and costs if it shall fail to make its plea good, then the above obligation is to be void; otherwise to remain in full force and effect.

POSTAL TELEGRAPH CABLE CO.,
By BRAME & ALEXANDER,
Att'ys & Att'ys.

R. W. MILLSAPS.
E. M. PARKER.

Approved this Feb. 1, 1894.
J. A. P. CAMPBELL,
Chief Justice of the Supreme Court of Mississippi.

Endorsed: Writ of error bond. Filed Feb'y 1, 1894. Oliver Clifton, clerk, by C. C. Campbell, D. C.

45 STATE OF MISSISSIPPI:

Supreme court.

I, Oliver Clifton, clerk of the supreme court of Mississippi, do hereby certify that the above and foregoing is a true, correct, and complete copy of the record, orders, appeal proceedings, and exhibits in case No. 7519, Postal Telegraph Cable Company *v.* Wirt

Adams, revenue agent, &c., lately pending in and determined by said supreme court, as the same appear of record and on file in my office.

Witness my hand and seal of said supreme court, at office, at Jackson, this February 21st, 1894.

[Seal State of Mississippi Supreme Court.]

OLIVER CLIFTON, *Clerk*,
By C. C. CAMPBELL, *D. C.*

Fees for this transcript, $48.50.
Received payment of Postal Telegraph Cable Co. Feb'y 21, '94.

OLIVER CLIFTON, *Clerk*,
By C. C. CAMPBELL, *D. C.*

Endorsed on cover: Case No. 15,515. Mississippi supreme court. Term No., 649. The Postal Telegraph Cable Company, plaintiff in error, *vs.* Wirt Adams, revenue agent of the State of Mississippi. Filed February 23, 1894.

155-684

Office Supreme Court, U. S.
FILED
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JAMES H. McKENNEY,
Clerk.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM 1894.

No. 649.

POSTAL TELEGRAPH CABLE COMPANY, PLAINTIFF IN ERROR,

vs.

WIRT ADAMS, REVENUE AGENT OF THE STATE OF MISSISSIPPI.

In Error to the Supreme Court of the State of Mississippi.

Brief of Messrs. T. M. Mordecai and Philip H. Gadsden, for Plaintiff in Error.

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1894.

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WIRT ADAMS, REVENUE AGENT OF THE STATE OF MISSISSIPPI.

In Error to the Supreme Court of the State of Mississippi.

Brief of Messrs. T. M. Mordecai and Philip H. Gadsden, for Plaintiff in Error.

This is an action instituted by Wirt Adams, Revenue Agent of the State of Mississippi, against the Postal Telegraph Cable Company, a body corporate under the laws of the State of New York, for the recovery of a privilege tax alleged to be due by the appellant for the years 1890 and 1891, under Section 585, Code of 1880 and the amendment thereto contained in Section 1, Chapter 3, Acts of 1888, which contains, among other provisions, the following: "A tax on privileges is levied, as follows, to wit: On each Telegraph Company operating one thousand miles or more, which shall be in lieu of other State, County or municipal taxes, $3,000. * * * * * * * On each Telegraph Company operating less than one thousand miles of wire, for each mile of wire, $1.00."

The declaration alleges that the defendant, the Postal Telegraph Cable Company, operated during the years 1890 and 1891, respectively, 391 28/100 miles of wire, thus becoming liable to pay a privilege tax license, of one dollar for each mile of Telegraph line so operated, amounting for the years 1890 and 1891 in the aggregate to the sum of $782.56, and for a second cause of action that the said Company from the 1st day of January, 1890, and since that time, owned within the State of Mississippi property to the value of $41,967.54, thus becoming liable to pay an *ad valorem* tax to each of the Counties named in said declaration, said tax amounting in the aggregate to the sum of $878.49, and that said Company so owning said property aforesaid, was under the further duty to pay an *ad valorem* tax for said years to the State of Mississippi on said property, said taxes for said years being the sum of $310.07, and the aggregate amount of *ad valorem* tax, both State and County, amounting to the sum of $1,188.66.

Upon the service of these papers, and before the time for answering had expired, the Postal Telegraph Cable Company petitioned to have the said cause removed to the Circuit Court of the United States for the Southern District of Mississippi, (folio 7) whereupon said cause was removed to said Circuit Court. (Folio 12.) A motion having been made to remand, the cause was remanded to the Circuit Court for the First District of Hinds County, for the State of Mississippi, (folio 14.) whereupon the defendant, the Postal Telegraph Cable Company, duly filed its answer, setting out that the defendant is a Telegraph Company duly incorporated and organized under the laws of the State of New York, and was on the 1st days of January, 1890, 1891 and 1892, respectively, engaged in and still continues, to carry on the business of a Telegraph Company, having offices in various cities and towns in the State of Mississippi, for the purpose of receiving and sending telegraphic messages and maintaining and operating certain lines of telegraph on the various post roads, public roads and railroads extending over, across, leading into and from the State of Mississippi to the State of Alabama, and other points in other States of the United States and the Dominion of Canada. That the defendant is also the lessee of the Atlantic Postal Telegraph Cable Company, a corporation duly organized under the laws of the State of New York, and by its charter authorized to construct and operate lines of telegraph in and between the various States of the Union, including the State of Mississippi. That as such lessee and owner this defendant is engaged in the general public telegraph business of transmitting messages for commercial purposes by, along and over its lines, within, from, through and across the State of Mississippi, and many other States and Territories of the Union, and

has offices for the receiving and sending of messages by telegraph in each and every State and Territory wherein the lines leased or owned by it extend, including the State of Mississippi. That on or about the 6th day of March, 1886, this defendant duly filed its written acceptance with the Postmaster General of the United States of the restrictions and obligations of the Act of Congress entitled "An Act to aid in the construction of telegraph lines and to secure to the Government the use of the same for postal, military and other purposes," approved July 24th, 1866, now Title 65 of the United States Revised Statutes, and that in pursuance thereof this Company has been designated by the Postmaster General as one of the Telegraph Companies that must transmit messages for the United States at a price and rate to be fixed by the said Postmaster General. That this defendant is still engaged as a Governmental agent of the United States, and was at the times hereinafter mentioned so engaged in transmitting messages for the Government of the United States between its various offices, not only from points within the State of Mississippi to points without the State of Mississippi, but also for such Government officers from points wholly within the State of Mississippi to other points also wholly within the State of Mississippi. That all of the roads upon which the lines of said Company are constructed are post roads of the United States. Defendant further shows that it is assessed annually upon all its property, according to its value, in the State of Mississippi, by the Railroad Commissioner of said State, and is taxed annually upon said value for State and County purposes. That it is also subject to laws which require the annual payment of specific license fees and charges in cities and towns for the privilege of doing its business therein in addition to the tax upon its property.

The case coming on to be heard in the Circuit Court of Hinds County, in the State of Mississippi, the Court sustained the demurrer of the defendant, the Postal Telegraph Cable Company, to the second cause of action set out in the declaration, viz: the *ad valorem* tax, and sustained the validity of Sections 557 and 558 of the Code of 1880 as amended, and rendered judgment against the defendant company for the sum of $927.21, being the amount of privilege tax sued for. (Folio 19.)

Upon appeal to the Supreme Court of the State of Mississippi the judgment below was affirmed, the opinion of the Court being delivered by Mr. Justice Woods, (folio 21.) From this judgment the Postal Telegraph Cable Company, plaintiff in error, has appealed to this Court upon the following assignments of error:

1. The Supreme Court of Mississippi erred in sustaining the demurrer of plaintiff below, to defendant's special plea.

2. That said Court erred in entering judgment in favor of plaintiff below.

3. The action sought to be maintained by the plaintiff below is in contravention to the Constitution and laws of the United States.

4. The Act of the Legislature of the State of Mississippi, Chapter 3 of the laws of said State, approved March 8th, 1888, upon which this action is sought to be maintained, a copy of which is hereto annexed and marked "Exhibit A," is unconstitutional and void, in so far as it seeks to impose the privilege tax sued, being in contravention to the Constitution and laws of the United States.

5. Said Act of the Legislature imposing a privilege tax on plaintiff in error is void because it is an attempt by the State of Mississippi to regulate interstate commerce, in violation of Clause 3, Section 8, Article 1, of the Constitution of the United States.

6. Said privilege tax is attempted to be collected in this case in violation of the Act of Congress of July 24th, 1866, now Title 65 of the Revised Statutes of the United States and is for that reason null and void.

7. That said privilege tax is a restraint upon the duly authorized agent of the Government in the transaction of Government business.

8. Because the Court erred in holding "the State may tax the exercise of its franchise within her borders and under the sheltering protection of her laws and government, and no foreign corporation may arrogantly assume any superiority over her domestic corporations. The privilege tax, the tax, on business, the occupation, the tax on the exercise of franchises may be incidentally burdensome to interstate commerce. It does affect the business somewhat and inevitably, but so does an *ad valorem* tax on the property employed in such commerce. It subtracts that much from the sum total engaged in the traffic. So does the tax on gross receipts, as in the case of State tax on railway gross receipts: 15 Wall. So does the tax for the privilege of exercising its franchises by a railroad company in

any State, ascertainable and determinable by the amount of its gross transportation receipts, scaled as required in Maine vs. Grand Trunk Railway Co., 142 U. S. Every tax is a burden and to the extent imposed is an interference with the pursuit of business upon which it is laid. If the business is partly interstate, then that commerce is incidentally affected and interfered with by every tax of any nature whatever that may be levied on it."

9. Because the Court erred in holding "that in the case at bar there is no direct burden upon interstate commerce. There is no further interference with it than will be found necessarily to result from the imposition of any burden of taxation in any shape."

10. Because the Court erred in holding that "in the case at bar there is no taxation of messages, interstate and other, there is no exclusion or attempted exclusion by State law of a governmental agency or a foreign corporation partially engaged in interstate commerce."

11. Because the Court erred in holding that "because the tax sought to be imposed herein is not in excess of the amount which might have been imposed by an *ad valorem* tax that the same was therefore constitutional."

12. Because the Court should have held that by said Act of the Legislature of the State of Mississippi, the attempt being made to assess and tax upon the property and business of this defendant for public purposes at a greater rate than is assessed and taxed on property of individuals in the State of Mississippi, and that such assessment and taxation not being according to the value of said property, and being at a much greater rate of taxation for public purposes than other moneyed capital or property employed or invested in commercial business, and employed in other commercial operations within the State of Mississippi is assessed or taxed for public purposes, and said taxes being unequally imposed and inequitable, said Act of the Legislature of the State of Mississippi is in violation of the Constitution of the State of Mississippi, as well as the Constitution of the United States and the laws of Congress.

13. Because the Court should have held, that under and by virtue of Article XII of the Constitution of the State of Mississippi, providing that all property must be assessed and taxed according to its value for purposes of revenue, and that

taxes must be uniform, said Act of the Legislature of the State of Mississippi is in contravention to and in violation of said Article XII of the Constitution of the State of Mississippi.

14. Because the Court should have held, that this defendant being assessed upon all of its property according to its value in the State of Mississippi by the railroad commissioner of said State, and being taxed upon said value for State and county purposes, said Act of the Legislature of the State of Mississippi is unconstitutional, *ultra vires*, and void.

15. Because the Court should have held, that under the laws of the State of Mississippi, this defendant being subject to laws which require the payment of specific license fees and charges in cities and towns for the privilege of doing its business therein, in addition to the tax upon property, and said license, charges and fees often exceeding more than 10 per cent. of the value of the property of defendant located within the limits of such city and town within the State of Mississippi, said Act of the Legislature of the State of Mississippi is unconstitutional, *ultra vires*, and void.

16. Because the Court should have held, that this action being brought to recover a privilege tax or a license tax imposed for the purpose of revenue in addition to the taxation upon the value of the property of defendant, and in addition to annual local license charges and fees imposed by cities and towns upon the defendant for the purpose of revenue, said Act of the Legislature of the State of Mississippi is unconstitutional, *ultra vires*, and void.

17. Because the Court should have held, that said Act of the Legislature of the State of Mississippi imposed and exacted an illegal and unconstitutional tax from this defendant, and was for no other purpose or object, and is void, and the defendant cannot be made liable for any penalty for neglect to comply with the provisions of said Act.

18. Because said Court should have held, that the property of like nature to defendant's which are used by domestic corporations within the State of Mississippi not being taxed or assessed or charged for privileges in the manner or form or nature or extent as is this defendant, said Act of the Legislature of the State of Mississippi is unconstitutioual, *ultra vires*, and void.

19. Because said Court should have held, that there being a large number of miles of wire similar to those of defendant, used as electrical conductors for telephone and electric light and electric power purposes within the State of Mississippi, and the same not being taxed or assessed or charged by law for privileges in the manner, form, or nature, or extent as is this defendant, said Act of the Legislature of the State of Mississippi is unconstitutional, *ultra vires*, and void.

20. Because said Court should have held, that said taxes claimed of the defendant not being imposed upon it or its property or business in the same manner, or form, or nature as are taxes imposed or required to be paid by individuals upon property or business within the State of Mississippi, said Act of the Legislature of the State of Mississippi is unconstitutional, *ultra vires*, and void.

21. Because said Court should have held, that the telegraph wires used by this defendant not exceeding in value the sum of fifteen dollars per mile for each mile thereof, and property of like nature and use belonging to other corporations in the State of Mississippi being of much more value than that of defendant, and yet being assessed and taxed to the extent only and in the manner and amount as is that in use by the defendant, said Act of the Legislature of the State of Mississippi is unconstitutional, *ultra vires*, and void.

22. Because the Court should have held, that said license charge or privilege tax in the complaint named, only applies to telegraph lines and wires along railroad lines which are in use by railroads and belong to, or are operated in connection with the railroad business, and that the same cannot be made to apply to the telegraph lines of this defendant.

23. Because the Court should have held, that none of the lines of defendant being a part of or belonging to any railroad lines, and not being connected in any manner with said railroads or their business, and said lines of defendant being only along the common public highways in said State, said license charge should not have been imposed upon the defendant, and is unconstitutional, *ultra vires*, and void.

24. Because the Court should have held, that said tax and charges upon the telegraph lines of defendant in the State of Mississippi is a restraint upon the use of the post-roads of the United States, and is an infringement of the Legislative domain of Congress, and is in violation of Clause 3, Section 8,

Article I, of the Constitution of the United States, and is also in violation of the Act of Congress of July, 1866, now known as Title 65, of the Revised Statutes of the United Statutes.

25. Because said court should have held that the matters and sums claimed in the complaint are a restraint upon the franchises of the defendant in the State of Mississippi and are a restraint upon trade and inter-state commerce and communication by telegraph between the States, and is a restraint upon the duly authorized agent of the Government in the transactions of Government business.

26. Because the Court should have held that the enforcement of said claims in the declaration mentioned would be against the public policy of the State of Mississippi, and against the public policy of the United States.

27. Because the Court should have held that said Act of the State of Mississippi did not afford the petitioner the equal protection of the laws that are applied to individuals upon taxation of property,

28. Because the Court should have held that said Act of the legislature of the State of Mississippi, to wit: the Act of the legislature of the State of Mississippi, known as Chapter 3 of the laws of said State, approved March 8th, 1888, is in violation of and in contravention to subdivision 7, section 8, article 1, of the Constitution of the United States.

29. Because the Court should have held that said Act of the legislature of the State of Mississippi, to wit: the Act of the legislature of the State of Mississippi, known as chapter 3 of the laws of said State, approved March 8th, 1888, is in violation of and in contravention to subdivision 18, section 8, article 1, and section 2, article 6, of the Constitution of the United States.

30. Because the Court should have held that said Act of the Legislature of the State of Mississippi, to wit: the Act of the Legislature of the State of Mississippi known as Chapter 3 of the laws of said State approved March 8th, 1888, is in violation of and in contravention to Section 1, Article XIV, (amendment) Constitution of the United States.

31. The Circuit Court of the first district of Hinds County, Mississippi, and the Supreme Court of said State had no jurisdiction to proceed with the hearing of this cause and render judgment against defendant below, because, as the record shows, this case was in due time regularly and properly removed to the Circuit Court of the United States in and for the southern district of Mississippi.

32. The Court below had no jurisdiction or authority to render the judgment complained of

ARGUMENT.

PROPOSITION I.

The tax sought to be collected from the Postal Telegraph Cable Company is a license tax for the privilege of exercising its franchises within the State of Mississippi.

It is frequently a very difficult question to decide whether a tax under consideration is to be considered an ordinary exercise of the taxing power of the State, in the nature of a property tax, or as in the nature of a privilege charge imposed as condition precedent to the right to do business within the State, and as the principles of law applicable to the two classes are widely different, it is a matter of great importance to decide in any given case under which head the proposed imposition must be classed.

If it be a general exercise of the taxing power of the State upon the *property* situate within the State for the purpose of making it bear its burden of and contribute its quota to the administration of the government within the State, it would ordinarily be considered a proper exercise of legislative powers, and a question to be decided almost exclusively with reference to the restrictions of the State Constitution; but, on the other hand, if it be considered as a license charge or privilege tax imposed by the State upon a foreign corporation for the privilege of exercising its franchises within such State, then such Act must be considered with reference to the limitations of the National Constitution, which limitations and restrictions have been repeatedly pointed out in the numerous cases which have been decided by this Court. Whatever the difficulty which may have arisen in other cases which have been brought up for decision by this Court, we think that a careful examination of the Act of the State of Mississippi now brought in question will establish conclusively that this is essentially a privilege license or tax. The declaration is founded upon two causes of action; first, for the recovery of a *privilege* tax, expressly so named, of one dollar per mile for every mile of telegraph wire, and second, for an *ad valorem* tax based upon the valuation of the property situate within the State, so that in this case we have both classes of taxation sought to be enforced against the Postal Telegraph Cable Company, a license charge for the privilege of exercising its franchises, and an *ad valorem* tax upon its real and personal property within the State.

Upon the trial in the lower Court, the Act imposing the *ad valorem* tax was held to be unconstitutional, and that feature of the case disappeared from further consideration. It has been decided in a number of cases that the Supreme Court of the United States will not interfere with the construction of a State of its own statues in reference to its own Constitution. This Court has declared that it will follow—and will never inquire whether such construction in reference to its own Constitution be right or wrong. In re. Lockwood, 154 U. S., 116. Postal Tel. Cable Co. vs. Charleston, 153 U. S., 692–694.

The Supreme Court of Mississippi, by Mr. Justice Woods, has declared, folio 21: "It will be thus seen at once that this is a tax imposed upon a Telegraph Company in lieu of all others as a privilege tax."

* * * * *

Folio 23: "In return the State claims a right to treat it as she treats similar corporations chartered by her own authority. She asserts her authority to tax the exercise of its franchise in her midst as she does all others, domestic as well as foreign corporations. The State may tax its property as she does all other property of person or corporation within her limits. She may tax the exercise of its franchises within her borders and under the sheltering protection of her laws and government, and no foreign corporation may arrogantly assume any superiority over her domestic corporations."

* * * * *

Folio 24: "For the use and occupation of the public roads of this State for the protection of its laws and government, in the exercise of its franchises and as its reasonable and proper contribution for the support of the Government whose care and shelter it enjoys, the State has imposed a privilege tax."

* * * * *

These extracts from the opinion of the Supreme Court of the State of Mississippi show conclusively the construction which that Court has put upon the Statute of the State of Mississippi. It has distinctly declared it to be a privilege tax upon foreign corporations for the purpose of exercising its franchises within the State of Mississippi, and we submit that the construction of the Supreme Court of the State of Mississippi as

to the nature of this Act is binding upon this Court and this view of the nature of this Act is abundantly supported by the facts as above set out. Article 12 of the Constitution of the State of Mississippi provides that all property must be assessed and taxed according to its value for the purposes of revenue and the taxes must be uniform, and therefore if this is to be considered a tax for the purposes of revenue it is in violation of said Section of the Constitution of the State of Mississippi and the fact that the Supreme Court of the State of Mississippi has declared said Act to be constitutional, proves conclusively that this is a license charge or privilege tax and not an ordinary property tax for the purpose of raising revenue.

This question was raised in this Court in the case of Pickard vs. the Pullman Southern Car Company, 117 U. S., page 44. In that case the State of Tennessee imposed a privilege tax of fifty dollars on every sleeping car running on railroads within the State of Tennessee, and Mr. Justice Blatchford delivering the opinion of the Court, said:

"The point upon which the final judgment was rendered in the case was the one considered and adjudged in the decision given on the demurrer to the declaration. The tax was not a property tax, because under the Constitution of Tennessee, all property must be taxed according to its value, and this tax was not measured by value, but was an arbitrary charge. What was done by the plaintiff was taxed as a privilege, it being assumed by the State authorities, that the Legislature had the power, under the Constitution of Tennessee, to enact the 6th section of the Act of 1877, and that the plaintiff had done what that section declared to be a privilege."

We think then that this has been shown conclusively to be a privilege tax, a condition upon the performance of which the right to do business depends, and to which the right of doing business is referred.

PROPOSITION II

This is a privilege tax sought to be imposed upon the Postal Telegraph Cable Company, a foreign corporation engaged in interstate commerce and in transmitting messages for the Government of the United States for the right to exercise its franchise within the State of Mississippi, and therefore unconstitutional and void.

Now, what is the tax? "On each Telegraph Company operating one thousand miles or more, which shall be in lieu of other State, county or municipal taxes, $3,000."

"On each Telegraph Company operating less than one thousand miles of wire, for each mile of wire $1.00."

This Court has decided in a large number of cases that no State can place a restriction in any form upon inter-state commerce either upon the commerce itself, the business of doing inter-state commerce or the instruments and means employed to carry on such commerce.

"It is well settled by numerous decisions of this Court that a State cannot, under the guise of a license tax, exclude from its jurisdiction a foreign corporation engaged in inter-state commerce, or impose any burdens upon such Company within its limits."

Norfolk and Western Railroad vs. Pennsylvania, 136 U. S. 114.

"We have repeatedly decided that a State law is unconstitutional and void which requires a party to take out a license for carrying on inter-state commerce, no matter how specious the pretext may be for imposing it."

Crutcher vs. Kentucky, 141 U. S., 58."

"We have repeatedly held that no State has a right to lay a tax upon inter-state commerce in any form whether by way of duties laid on the transportation of the subjects of that commerce or on the receipts derived from their transportation or on the occupation or business of carrying it on for the reason that taxation is a burden on that commerce and amounts to a regulation of it, which belongs solely to Congress."

Ling vs. Michigan, 135 U. S., 161.

It is needless to quote authority for the proposition that a telegraph company is an agent of interstate commerce, and that the business transacted by it between different States is interstate commerce. This principle was laid down in the case of Pensacola Telegraph Co. against Western Union Telegraph Co., 96 U. S., 10, reaffirmed in the case of Telegraph Co. against Texas, 105 U. S., 464, and recognized in every subsequent decision of this Court on this question. It being admitted then that the Postal Telegraph Cable Co. is an instrument of interstate commerce, transmitting messages from various points in different States of the Union to its offices within the State of Mississippi,—is the tax in question a restraint upon its operations and such an interference with its interstate business as is prohibited by the Constitution of the United States as construed by the decisions of this Court?

In the case of Pensacola Telegraph Co. against Western Union Telegraph Co., 96 U. S., 1, it was decided that an Act of the State of Florida, granting to the Pensacola Telegraph Co. the exclusive right of establishing and maintaining lines of telegraph as therein specified, was in conflict with Section 5263

of the Revised Statutes of the United States; at page 12, the Court say: "The State law in question so far as it confers exclusive rights upon the Pensacola Company is certainly in conflict with this legislation of Congress. To that extent therefore it is inoperative as against the corporation of another State entitled to the privileges of the Act of Congress."

In Telegraph Co. against Texas, 105, U. S., 460, Chief Justice Waite, delivering the opinion of the Court, says: "The Western Union Telegraph Co., having accepted the restrictions and obligations of the provision by Congress, occupies in Texas the position of an instrument of foreign and interstate commerce, and are a government agent for the transmission of messages on public business. Its property in the State is subject to taxation the same as other property, and it may undoubtedly be taxed in a proper way, on account of its occupation and its business. The precise question now presented is whether the power to tax its occupation can be exercised by placing a specific tax on each message sent out of the State, or sent by public officers on the business of the United States." * * * * * * The present case, as it seems to us, comes within this principle. The tax is the same on every message sent, and because it is sent without regard to the distance carried, or the price charged. It is in no respect proportioned according to the business done. If the message is sent, the tax must be paid, and the amount determined solely by the class to which it belongs. If it is full rate, the tax is one cent, and if less than full rate, one half cent. Clearly, if a fixed tax for every two thousand pounds of freight carried is a tax on the freight, and for every measured ton of a vessel a tax on tonnage, or for every passenger carried, a tax on the passenger, or for the sale of goods, a tax on the goods, this must be a tax on the messages. As such, so far as it operates on private messages sent out of the State, it is a regulation of foreign and interstate commerce, and beyond the power of the State. That is fully established by the cases already cited. As to the government messages, it is a tax by the State on the means employed by the Government of the United States to execute its constitutional powers, and therefore void."

In the case of Gloucester Ferry Co. against Pennsylvania, 114 U. S., 196, the State of Pennsylvania attempted to levy a tax on the Gloucester Ferry Co., a corporation created under the laws of the State of New Jersey upon its capital stock, and the Court say: "Transportation implies the taking up of persons and property at some point and putting them down at another. A tax, therefore, upon such receiving and landing of passengers and freight is a tax on their transportation, that is upon the commerce between the two States involved in such transportations. It matters not that the trans-

portation is made in ferry boats which pass between the State any hour in the day. The means of transportation of persons and freight between the States does not change the character of the business as one of commerce, nor does the time within which the distance between the States may be traversed. The power to regulate that commerce as well as commerce with foreign nations, vested in Congress, is the power to proscribe the rules by which it should be governed, that is the condition upon which it shall be conducted, to determine when it shall be free and when subject to duties or other exactions. The power also embodies within its control all the instrumentalities by which that commerce may be carried on, and the means by which it may be aided and encouraged. The subjects, therefore, upon which the power may be exerted are of infinite variety."

In the case of Pickard against Pullman Southern Car Co., 117 U. S., 34, this Court has passed upon the identical question involved in the case at bar. The Legislature of the State of Tennessee passed an Act which imposed a privilege tax of fifty dollars per annum on every sleeping car or coach run over a railroad in Tennessee, and the Court held such Act unconstitutional so far as it applied to the interstate transportation of passengers carried over the railroads in Tennessee into or out of or across that State in sleeping cars owned by a corporation of Kentucky. The opinion of the Court on this point is as follows:

"The point upon which the final judgment was rendered in the case was the one considered and adjudged in the decision given on the demurrer to the declaration. The tax was not a property tax, because under the Constitution of Tennessee, all property must be taxed according to its value, and this tax was not measured by value, but was an arbitrary charge. What was done by the plaintiff was taxed as a privilege, it being assumed by the State authorities, that the legislature had the power under the Constitution of Tennessee to enact the 6th Section of the Act of 1877, and that the plaintiff had done what that section declared to be a privilege. By the decisions of the Supreme Court of Tennessee cited in the opinion of the Circuit Court on the demurrer, it is held, that the legislature may declare the right to carry on any business or occupation to be a privilege, to be purchased from the State on such conditions as the statute law may prescribe, and that it is illegal to carry on such business without complying with those conditions. In this case the payment of the tax imposed was a condition prescribed, without complying with which what was done by the plaintiff was made illegal. The tax was imposed as a condition precedent to the right of the plaintiff to run and use the thirty-six sleeping cars owned by it, as it ran and

used them on railroads in Tennessee. The privilege tax is held by the Supreme Court of Tennessee to be a license tax or the privilege of doing the thing for which the tax is imposed, it being unlawful to do the thing without paying the tax. What was done by the plaintiff in this case, in connection with the use of the thirty-six cars, if wholly a branch of inter-state commerce, was made by the State of Tennessee unlawful unless the tax should be paid, and to the extent of the tax, a burden was placed on such commerce; and upon principle, the tax if lawful might equally well have been large enough to practically stop altogether the particular species of commerce. The tax was a unit, for the privilege of the transit of the passenger and all its accessories. No distinction was made in the tax between the right of transit, as a branch of commerce between the States, and the sleeping and other conveniences which appertained to a transit in the car. The tax was really one on the right of transit, though laid wholly on the owner of the car."

The Court quotes with approval Railroad Company vs. Maryland, 21st Wallace, 456:

"A State cannot impose a tax or duty on the movements or operations of commerce between the States, because it would be a regulation of such commerce" in a matter which is essential to the rights of all, and therefore requiring the exclusive legislation of Congress, being "a tax because of the transportation," and "therefore virtually, a tax on the transportation,"

The similarity between the case last quoted and the case at bar is very striking. In that case a tax is sought to be imposed upon each sleeping car operated within the State of Tennessee which cars were used for the transportation of inter-state passengers. In this case a tax of one dollar a mile is sought to be imposed on every mile of telegraph wire operated by the defendant Company within the State of Mississippi which telegraph wires it is admitted are continuously and uninterruptedly engaged in the transmission of inter-state messages and messages for the government of the United States.

In Pickard against Pullman Southern Car Co., the Court has held that a tax on the means or instruments of transportation, is a tax on the transportation itself. Applying this reasoning to the present case the State of Mississippi seeks to impose a tax of one dollar per mile on each mile of wire which is in fact a tax upon every message transmitted along these wires, and as it is admitted that these wires are engaged in the transmission of inter-state messages it follows necessarily

that such tax must be a charge upon each and every inter-state message transmitted along these lines. Reduced to this proposition, the conclusion that such tax is unconstitutional is unavoidable.

In the case of Robbins against Shelby County Taxing District, 120 U. S., 489, this Court held an Act of Tennessee requiring all drummers not having a regular license house of business in the District, offering for sale or selling goods, to pay to the county the sum of ten dollars per week for such privilege in so far as it applied to persons engaged in the sale of goods on behalf of individuals or firms doing business in another State, to be a regulation of commerce among the States, and to be in violation of the provisions of the Constitution of the United States, and that inter-state commerce cannot be taxed at all by a State even though the same amount of tax should be laid on domestic commerce or that which is carried on solely within the State.

In Fargo against Michigan, 121 U. S., 230, "a Statute which levies a tax upon the gross receipts of railroads for the carriage of freights and passengers into, out of or through the State is a tax upon commerce among the States and therefore void."

The States cannot be permitted under the guise of a tax upon business transacted within their borders to impose a burden upon commerce among the States, when the business so taxed is itself inter-state commerce. In this case there is an elaborate review of the authorities bearing on the subject of State interference with inter-state commerce and Mr. Justice Miller delivering the opinion of the Court, says:

"The proposition that the States can, by way of a tax upon business transacted within their limits, or upon the franchises of corporations which they have chartered, regulate such business or the affairs of such corporations, has often been set up as a defence to the allegation that the taxation was such an interference with commerce as violated constitutional provisions now under consideration. But where the business so taxed is commerce itself and is commerce among the States or with foreign nations, the constitutional provision cannot be thereby evaded, and in the case of Philadelphia Steamship Company against Pennsylvania, 122 U. S., 326, the Court has gone so far as to hold that a State tax upon the gross receipts of a steamship company incorporated under its laws which are derived from the transportation of persons and property by sea, between

different States and to and from foreign countries, is a regulation of inter-state and foreign commerce in conflict with the exclusive powers of Congress under the Constitution. In the opinion of the Court we find that this transportation was an act of inter-state and foreign commerce; it was the carrying on of such commerce, it was that and nothing else. In view of the decisions of this Court it cannot be pretended that the State could constitutionally regulate or interfere with that commerce itself, but taxing is one of the forms of regulation. It is one of the principal forms. Taxing the transportation either by its tonnage or its distance, or by the number of trips performed, or in any other way would certainly be a regulation of commerce, a restriction upon it, a burden upon it. Clearly this could not be done by the State without interfering with the powers of Congress." * * * *

"If, then, the commerce carried on by the plaintiff in error in this case could not be constitutionally taxed by the State, could the fares and freights received for transportation in carrying on that commerce be constitutionally taxed? If the State cannot tax the transportation, may it, nevertheless, tax the fares and freights received therefor? Where is the difference? Looking at the substance of things, and not at mere forms, it is very difficult to see any difference. The one thing seems to be tantamount to the other. It would seem to be rather metaphysics than plain logic for the State officials to say to the Company: "We will not tax you for the transportation you perform, but we will tax you for what you get for performing it."

But the decision of this Court in the case of LeLoup against the Port of Mobile, 127 U. S., 640, seems to be conclusive of the question under consideration. In that case the Western Union Telegraph Company having an office in the city of Mobile, Ala., was required to pay a license tax under the city ordinance, which imposed an annual license tax of $225 on all telegraph companies. The wording of the license was, "On all telegraph companies, $225." In the opinion, the Court say: "In approaching the question thus presented it is proper to note that the license tax in question is purely a tax on the privilege of doing the business in which the telegraph company was engaged." "By the laws of Alabama in force at the time this tax was imposed, the telegraph company was required in addition to pay taxes to the State, county and port of Mobile, on its poles, wires, fixtures and other property at the same rate and to the same extent as other corporations and individuals were required to do. * *

"The question is squarely presented to us, therefore, whether a State, as a condition of doing business within its jurisdiction may exact a license tax from a telegraph company, a large

part of whose business is the transmission of messages from one State to another and between the United States and foreign countries, and which is invested with the powers and privileges conferred by the Act of Congress, passed July 24th, 1866, and other Acts incorporated in Title LXV of the Revised Statutes? Can a State prohibit such a company from doing a business within its jurisdiction, unless it will pay a tax and procure a license for the privilege? If it can, it can exclude such companies, and prohibit the transaction of such business altogether. We are not prepared to say that this can be done."

"Ordinary occupations are taxed in various ways, and in most cases legitimately taxed. But we fail to see how a State can tax a business occupation when it cannot tax the business itself. Of course, the exaction of a license tax as a condition of doing any particular business, is a tax on the occupation, and a tax on the occupation of doing business is surely a tax on the business."

* * * "But it is urged that a portion of the telegraph company's business is internal to the State of Alabama, and therefore taxable by the State. But that fact does not remove the difficulty. The tax affects the whole business without discrimination. There are sufficient modes in which the internal business, if not already taxed in some other way, may be subjected to taxation, without the imposition of a tax which covers the entire operations of the company." This case of LeLoup against the Port of Mobile is the leading case on this subject. It has been repeatedly referred to and expressly affirmed in every case subsequently arising in this Court. It has been referred to with approval in the following cases:

Asher vs. Texas, 128 U. S., 129; 132 U. S., 473; 132 U. S., 475; 132 U. S., 477; 135 U. S., 166; 136 U. S., 110; 141 U. S., 58; 142 U. S., 234; 142 U. S., 349; 148 U. S., 105; 141 U. S., 45; 141 U. S., 23; 145 U. S., 26.

And we venture to say, that there is no decision in this Court, which, considering its recent date has been so repeatedly referred to and so unanimously concurred in.

By an examination of the Ordinance of the City of Mobile and the Act of the State of Mississippi it will be found that they are almost identical in wording and in effect. The ordinance of Mobile reads: "On all telegraph companies, $225." The Act of Mississippi reads: "On each telegraph company operating one thousand miles or more $3,000; on each tele-

graph company operating less than one thousand miles of wire for each mile of wire one dollar."

In each case the license was an attempt to impose a charge upon the entire operations of the company. No exception is made in either case as to inter-state commerce or as to Governmental business. It is a single tax upon the entire operations of the company. The Act of the State of Mississippi is a privilege tax imposed upon telegraph companies for the privilege enjoyed in exercising its franchise within the State. If the State of Mississippi had laid a tax upon the internal business of the company which was not governmental business, or as in the case of Western Union Telegraph Company against Texas upon each message between points wholly within the State excepting governmental messages, no objection could be raised to its constitutionality. But the tax in question does not purport to tax the business of the company or its messages, it is a tax upon its occupation, a tax upon its right to do business, a charge for the privilege of exercising the franchises conferred upon it by the State of New York and carried on by virtue of Section 5263 of the Revised Statutes of the United States, and as the Court in the last cited case says: "There are sufficient modes in which the internal business, if not already taxed in some other way, may be subjected to taxation, without the imposition of a tax which covers the entire operations of the company."

Again in the case of Ratterman against Western Union Telegraph Company, 127 U. S., 411, decided at the same term as LeLoup against the Port of Mobile, this Court held "A single tax assessed under the laws of the State of Ohio upon receipts of a telegraph company which were partly derived from inter-state commerce and partly from commerce within the state and which were capable of separation, but were returned and assessed in gross and without separation or apportionment is invalid in proportion to the extent that such receipts were derived from inter-state commerce."

In Western Union Telegraph Co., against Alabama, 132 U. S., 472. "No tax can be imposed by a State upon telegraphic messages sent by a company which has accepted the provisions of Revised Statutes 5263 or upon the receipts derived therefrom, where the communication is carried, either into the State from without, or from within the State to another State." In this case the State of Alabama imposed a tax on the gross amount of receipts of the telegraph company derived from business done by it within the State. This Court held that the construction given to the Act by the Supreme Court of the State of Alabama, namely that receipts both on inter-state and intra-state messages should be returned, was erroneous, and that the Act

as thus construed was unconstitutional and was a regulation of inter-state commerce, and the Court continued. "The question on which the jurisdiction of this Court depends has been decided in this Court so frequently of late years, several decisions having been made since the judgment of the Supreme Court of Alabama was delivered, that but little remains to be said in the present case except to show that it comes within the principles of the cases referred to. That principle is in regard to telegraph companies which have accepted the provisions of the Act of Congress of July 24th, 1866, Sections 5263 to 5268 of the Revised Statutes of the United States, that they should not be taxed by the authorities of a State for any messages or receipts arising from such messages from points within the State to points without, or from points without the State to points within, but that such taxes may be levied on all messages carried and delivered exclusively within the State. The foundation of this principle is that messages of the former class are elements of commerce between the States and not subject to legislative control of the States, while the latter class are elements of internal commerce solely within the limits and jurisdiction of the State and therefore subject to its taxing power," quoting as authority for this proposition.

Pensacola Telegraph Co. against Western Union Tel. Co., 96 U. S., 1.
Telegraph Co. vs. Texas, 105 U. S., 460.
Telegraph Co. vs. Massachusetts, 125 U. S., 530.
Ratterman vs. Western Union Tel. Co., 127 U. S., 411.
LeLoup vs. Port of Mobile, 127 U. S., 640.
Fargo vs. Michigan, 121 U. S., 230.
Philadelphia and Southern S. S. Co. vs. Pennsylvania, 122 U. S., 326.

McCall vs. California, 136 U. S., 105. This was a case of an agent stationed at San Francisco for the purpose of soliciting passengers going from San Francisco to New York, and to take that line at Chicago. A license tax imposed upon the agent for the privilege of doing such business in San Francisco was declared to be a tax upon interstate commerce, and unconstitutional. In its opinion the Court says:

"This proposition presents the only question in the case, and if it appears from this record that the business in which the plaintiff in error was engaged was interstate commerce, it must follow that the license tax exacted of him as a condition precedent to his carrying on that business was a tax upon interstate commerce, and therefore violative of the commercial clause of the Constitution."

* * * * * * * *

"Tested by these principles and definitions, what was the business or occupation carried on by the plaintiff in error on which the tax in question was imposed? It is agreed by both parties that his business was that of soliciting passengers to travel over the railroad which he represents as agent. It is admitted that the travel which it was his business to solicit is not from one place to another within the State of California. His business, therefore, as a railroad agent, had no connection, direct or indirect, with any domestic commerce between two or more places within the State. His employment was limited exclusively to inducing persons in the State of California to travel from that State into and through other States to the city of New York. To what, then, does his agency relate except to interstate transportation of persons? Is not that as much an agency of interstate commerce as if he were engaged in soliciting and securing the transportation of freight from San Francisco to New York City over that line of railroad? If the business of the New York, Lake Erie and Western Railroad Company, in carrying passengers by rail between Chicago and New York and intermediate points, in both directions, is interstate commerce, as much so as is the carrying of freight, it follows that the soliciting of passengers to travel over that route was a part of the business of securing the passenger traffic of the Company. The object and effect of his soliciting agency were to swell the volume of the business of the road. It was one of the "means" by which the Company sought to increase and doubtless did increase its interstate passenger traffic. It was not incidentally or remotely connected with the business of the road, but was a direct method of increasing that business. The tax upon it, therefore, was, according to the principles established by the decisions of this Court, a tax upon a means or an occupation of carrying on interstate commerce pure and simple."

* * * * * * *

"It is further said that if the soliciting of passengers in California for a railroad running from Chicago to New York, is connected with interstate commerce at all, it is so very remotely connected with it that the hindrance to the business of the plaintiff in error caused by the tax could not directly affect the commerce of the road, because his business was not essential to such commerce. The reply to this proposition is that the essentiality of the business of the plaintiff in error to the commerce of the road he represented is not the test as to whether that business was a part of interstate commerce. It may readily be admitted, without prejudicing his defence, that the road would continue to carry passengers between Chicago and New York even if

the agent had been prohibited altogether from pursuing his business in California. The test is: was this business a part of the commerce of the road? Did it assist, or was it carried on with the purpose to assist, in increasing the amount of passenger traffic on the road? If it did, the power to tax it involves the lessening of the commerce of the road to an extent commensurate with the amount of the business done by the agent."

In the case of Norfolk and Western Railroad Company vs. Pennsylvania, 136 United States, 114, a tax imposed by the State of Pennsylvania upon this road for the privilege of keeping an office in the State for the use of its officers and stockholders was declared to be a tax upon commerce among the States, and as such repugnant to the Constitution of the United States.

Mr. Justice Lamar, in the opinion of the Court, says:

"We pass to the second inquiry above stated, viz.: Was the tax assessed agrinst the Company for keeping an office in Philadelphia, for the use of its officers, stockholders, agents and employees, a tax upon the business of the Company? In other words, was such a tax a tax upon any of the *means* or *instruments* by which the Company was enabled to carry on its business of inter-state commerce? We have no hesitancy in answering that question in the affirmative. What was the purpose of the Company in establishing an office in the city of Philadelphia? Manifestly for the furtherance of its business interests in the matter of its commercial relations.

In the case of Crutcher vs. Kentucky, 141 U. S., page 47, this same question was again brought up for the consideration of the Court; all the authorities here cited were reviewed and approved. In that case the State of Kentucky passed an Act imposing a license charge upon all foreign Express Companies doing business within the State, and the Court held that said Act was a regulation of inter-state commerce, so far as it applied to corporations of another State engaged in that business, and to that extent repugnant to the Constitution of the United States.

We submit, that this case of Crutcher vs. Kentucky is conclusive of the question under consideration in the case at bar. In that case the State of Kentucky required every foreign Express Company to take out a license for the privilege of transacting its business within the State of Kentucky. In this

case the State of Mississippi requires the Postal Telegraph Cable Company, a foreign corporation, to take out a license or pay a privilege tax of a dollar per mile for every mile of telegraph wire operated by it within the State. In the Kentucky case it was an exaction upon a foreign corporation engaged in inter-state commerce, and was held unconstitutional. In this case, the Postal Telegraph Cable Company is a foreign corporation, and is admittedly engaged in inter-state commerce, and therefore the reasoning of the Court in the case of Crutcher vs. Kentucky is applicable in every respect to the present case. In that case the Court says:

"To carry on inter-state commerce is not a franchise or a privilege granted by the State, it is a right which every citizen of the United States is entitled to exercise under the Constitution and laws of the United States, and the accession of mere corporate facilities, as a matter of convenience in carrying on their business, cannot have the effect of depriving them of such right, unless Congress should see fit to interpose some contrary regulation on the subject."

* * * * * * *

"We have repeatedly decided that a State law is unconstitutional and void which requires a party to take out a license for carrying on inter-state commerce, no matter how specious the pretext may be for imposing it."

* * * * * * *

"We do not think that the difficulty is at all obviated by the fact that the Express Company, as incidental to its main business, (which is to carry goods between different States,) does also some local business by carrying goods from one point to another within the State of Kentucky. This is, probably, quite as much for the accommodation of the people of that State as for the advantage of the company. But whether so or not, it does not obviate the objection that the regulations as to license and capital stock are imposed as conditions on the company's carrying on the business of inter-state commerce, which was manifestly the principal object of its organization. These regulations are clearly a burden and a restriction upon that commerce. Whether intended as such or not, they operate as such."

While the decisions of this Court upon this question are, of course, the highest authority, and are binding upon all other Courts of the Union when similar questions are involved, we cannot omit calling the attention of this Court to the recent case of Commonwealth vs. Smith, 92 Kentucky, page 38. In

that case the State of Kentucky passed an Act requiring each telegraph company to pay to the State a tax of one dollar per mile for the line of poles and first wire and fifty cents per mile for each additional wire. The Supreme Court of Kentucky held this to be a tax upon the business of the company, and therefore as to companies doing business between different States, in violation of the Federal Constitution. At the same time, and reported in the same volume, was heard the case of Commonwealth vs. United States Express Company. In that case the State of Kentucky required all Express Companies carrying on business in the State to pay a license of five hundred dollars per annum where the distance over which the line of the companies extend in the State is less than one hundred miles, and the annual sum of one thousand dollars where the distance is more than one hundred miles. This statute the Supreme Court also declared to be a regulation of inter-state commerce, and therefore in violation of the Federal Constitution. No case more similar to the one under consideration can possibly be found. Both the Kentucky and the Mississippi Statutes impose a tax of one dollar per mile upon every mile of telegraph wire. Both of them are expressed to be privilege taxes.

"This corporation has tangible property within the State, and this property, as is conceded, is subject to taxation under its laws, nor is it denied that it does an extensive business within the State as well as out of it, and it is admitted, as has already been determined in more than one case, that this company is an agent of inter-state commerce. (Telegraph Co. vs. Texas, 105 U. S., 460; Pensacola Telegraph Co. vs. Western Union Telegraph Co., 96 U. S., 1.) The lines of this Company cross the boundary of the State at Louisville and all the principal cities bordering on the Ohio river. The penalty for failing to pay this tax, and to which the agent is subjected, is a fine of five hundred dollars."

"It is contended by the defense that the tax imposed is a mere arbitrary sum fixed by the State without regard to the value of the property owned by the company, or even the income derived from it, and, in addition, that specific taxation is not a tax on property, but must necessarily be a tax on the occupation or business of the person sought to be taxed; while, on the other hand, it is claimed that the Legislature must judge whether the tax must be "*ad valorem*" or specific, and when uniform, it must be held valid."

"In this State the power of the Legislature to determine the mode of taxation, and to classify the property to be taxed, is

not an open question. It may be termed a specific tax as to corporate property, and "*ad valorem*" tax as to property that is ordinarily the subject of taxation. A railroad company may be taxed at a certain valuation for each mile, and if termed a specific tax, it is a taxation based on value, or the franchise itself granted by the State may be the subject of taxation without reference to the tangible property it owns. (Cincinnati, &c., R. Co. vs. Commonwealth, 81 Ky., 492.) The right of a State to tax the property of its citizens, when uniformity and equality exist in imposing the burden cannot well be doubted, and if this were the question presented in this case, we would have no difficulty in sustaining the tax. If this is a tax on the property of the corporation within the State, the Statute imposing the burden must be enforced, but if a tax on the business of a corporation, and that corporation an agent of inter-state commerce, it is then an exercise of power belonging to the National Government and must be held invalid."

"As said by Mr. Justice Strong, in Railroad Co. vs. Peniston, 18 Wall., it is therefore, manifest that exemption of Federal agencies from State taxation is dependent not upon the nature of the agent or upon the mode of their constitution, or upon the fact that they are agents, but upon the effect of the tax, that is, upon the question whether the tax does in truth deprive them of power to serve the Government as they were intended to serve it, or does it hinder the efficient exercise of their power. A tax upon their property has no such necessary effect. It leaves them free to discharge the duties they have undertaken to perform. A tax upon their operations is a direct obstruction to the exercise of Federal power."

"In this case the amount of the taxes due the State for the year ending in July, 1888, is $4,024.45, with a fine for the failure of the corporation or its agent to pay it."

"It may be difficult to estimate the value of the telegraph poles and the strands of wire necessary to conduct the business, but it becomes apparent from the fact itself, connected with the burden imposed on the corporation, that it is its occupation and business that have been taxed, without regard to the value of the property it actually owns within the State, and, with the heavy penalty imposed, it may directly interfere with the regulation of inter-state commerce and cannot be sustained."

"And in the case of Le Loup vs. Mobile, reported in 127 U. S., 640, the Court through Mr. Justice Bradley, says: "The

fairest and most just construction of the Constitution leads to the conclusion that no State has a right to lay a tax on inter-state commerce in any form, whether by way of duties laid on the transportation of the subjects of commerce, or on the receipts derived from that transportation, or on the occupation or business of carrying it on, and the reason is that such taxation is a burden on that commerce, and amouats to a regulation of it that belongs solely to Congress." "There is no limitation to the power within the State to tax, except such as virtually amounts to a confiscation of one's property: but there is not only a limitation, but a prohibition, on the power of the State to impose a tax on the business of corporations, or other agencies of inter-state commerce that, in effect, regulates inter-state traffic."

"In both of the cases under consideration, mere arbitrary sums are fixed without reference to value, and evidently, as is to some extent conceded, on the business of each, and whether under the guise of a specific or an "*ad valorem*" tax, it is manifest that the object and effect of each section of the Statute is to impose burdens on the transportation or business of both corporations, and not upon the property within the State. The amount of the tax, and the penalties annexed for enforcing payment is, in effect, a prohibition of the exercises of the legitimate business of each of the appellees without first complying with the conditions of the Statute. In view of the authorities cited, and the mode of enforcing this specific tax, it must be held that the two sections of the Statute are in violation of sub-section 3 of section 8, article I, of the Federal Constitution.

Judgment affirmed in both cases."

We have thus set out at length all the utterances of this Court upon this question from 96 United States to date, showing how the principle contended for has been repeatedly reaffirmed by this Court in every decision, and in every case in which the question was presented. Upon no principle of law have the opinions of this Court been so clearly defined, and so often affirmed that any interference on the part of the State with interstate commerce is violative of the Federal Constitution. The history of this kind of legislation has shown repeated attempts on the part of the States to evade this provision of the National Constitution, various forms of legislation have been adopted with a view to tax the interstate commerce of corporations, and make such business contribute to the expenses of the State, and while the decisions on the question may at times seem conflicting, a careful study of them will show that the

distinction which was first pointed out in the case of Railroad Company vs. Penniston, 18 Wallace, page 35, has been uniformly observed and followed, viz: that while a State may tax the property of foreign corporations situate within their territory, it cannot tax the operations of such Company. In that case the Court say:

"Such a tax must be unconstitutional. Here is a clear distinction made between a tax upon the property of a Government agent and a tax upon the operation of the agent acting for the Government. It is, therefore, manifest that exemption of Federal agencies from State taxation is dependent, not upon the nature of the agents, or upon the mode of their constitution, or upon the fact that they are agents, but upon the effect of the tax; that is, upon the question whether the tax does in truth deprive them of the power to serve the Government as they were intended to serve it, or does it hinder the efficient exercise of their power. A tax upon their property has no such necessary effect. It leaves them free to discharge the duties they have undertaken to perform. A tax upon their operations is a direct obstruction to the exercise of Federal powers. In this case the tax is laid upon the property of the Railroad Company precisely as was the tax complained of in Thomson vs. Union Pacific. It is not imposed upon the franchises or the right of the Company to exist and perform the functions for which it was brought into being. Nor is it laid upon any act which the Company has been authorized to do. It is not the transmission of dispatches, nor the transportation of United States Mails, or troops, or munitions of war that is taxed, but it is exclusively the real and personal property of the agent taxed in common with all other property in the State of a similar character."

It will be noticed in that case that the Court expressly points out that the tax was laid upon the *property* of a Railroad Company, and that it was not imposed upon the franchises or right of the Company to exist and perform the functions for which it was brought into being; that it was not laid on the transmission of dispatches nor on the transportation of the United States mails or troops, but that it was exclusively a tax upon the real and personal property in common with all other property of the State of a similar character. This is the distinction which has been universally recognized, and which was referred to in the first proposition of this argument. It is admitted that the State of Mississippi can lay a property tax upon all the real and personal property of the Postal Telegraph Cable Company, situate within the State; that the Telegraph Company must contribute its quota to the protection which it enjoys, and that its property in the State is subject to taxation by the State;

but, as we have already pointed out, this is not a tax upon the *property* of a Telegraph Company, for in the very action in which the tax now sought to be enforced is claimed, there is a cause of action founded on a property or *ad valorem* tax. The Supreme Court of Mississippi has expressly construed the Act now under consideration as imposing a privilege or license tax as contradistinguished from a property tax, and, therefore, the distinction which this Court has laid down in Railroad Co. vs. Penniston, applies with equal force to the case at bar. Again, in McCulloch vs. Maryland, 4th Wheaton, page 36, the Court say:

"This tax, then, is a tax on the operation of an instrument employed by the Government of the Union to carry these powers into execution; such a tax must be unconstitutional."

It is this very distinction between the principles applicable to a property tax and a privilege tax which has been lost sight of by the Supreme Court of the State of Mississippi, and which has led it into the error of supposing that the decisions of this Court have been conflicting on this subject.

The Supreme Court of the State of Mississippi has endeavored at great length to show that the utterances of this Court upon this question have been so divergent and so conflicting that no authoritative ruling can be deduced from them. The Mississippi Court admits that if it should be governed by the principles announced in Pensacola Telegraph Company vs. Western Union, 96 U. S., 1.

Western Union Telegraph Co. vs. Texas 105 U. S. 460; Gloucester Ferry Company vs. Pennsylvania 114 U. S. 196; Picard vs. Pullman Southern Car Company, 117 U. S., 34; Robbins vs. Shelby County Taxing District, 120 U. S., 489; LeLoup vs. Port of Mobile, 127 U. S., 640, and Crutcher vs. Kentucky, 141, U. S. 47; that the settlement of the controversy would be made without great difficulty in accordance with the contention of the appellant, but that the principles announced by the last cited cases are diametrically opposed to those announced in State tax on Railway gross receipts, 15th Wallace, 284; Osborn vs. Mobile, 16th Wallace, 479; Wiggins Ferry Co., vs. East St. Louis, 107 U. S., 530; Maine vs. Grand Trunk Railway Co., 142 United States, 217; Ficklin vs. Shelby County, 145 U. S. 1; and St. Louis, vs. Western Union Telegraph Company, 148 U. S., 92.

If the Supreme Court of Mississippi had made a careful analysis of the last cited cases and had followed the interpretation put upon these cases by this Court in subsequent decisions, their apparent conflict would have disappeared.

We will proceed to discuss these cases in the order cited by the Supreme Court of Mississippi, in the light of the subse-

quent decisions of this Court construing its decision in those cases.

The case of State tax on Railway gross receipts, 15th Wallace, 284, was reviewed at length in the case of Philadelphia Steamship Company vs. Pennsylvania, 122 U. S., 340, and it is there decided that the grounds of that decision were first, that the property had become commingled with the general mass of property within the State, and, second, that the tax was upon the franchise of a corporation granted to it by the State. This Court says: "A review of the question convinces us that the first ground on which the decision in State tax on Railway gross receipts was placed is not tenable; that it is not supported by anything decided in Brown vs. Maryland; but on the contrary, that the reasoning in that case is decidedly against it."

This effectually disposes of the authority of State tax on Railway gross receipts as this Court has decided that the grounds for the taxation of the receipts was untenable, and, of course, the second ground of decision, that the State was levying a tax on its own franchise has no bearing on the case at bar, as this is a case of a foreign corporation.

The case of Osborn vs. Mobile, 16 Wallace, 479, has been overruled by the case of Le Loup vs. Port of Mobile, 127 U. S., 644-647. In that case Mr. Justice Bradley says, in discussing Osborn vs. Mobile: "In view of the course of decisions which have been made since that time, it is very certain that such an ordinance would now be regarded as repugnant to the power conferred upon Congress to regulate commerce among the several States."

And in Ficklin vs. Shelby County, 145 U. S., 26, this Court says:

"This Court overruling Osborn vs. Mobile, 16th Wallace, 479, said, that no State has a right to lay a tax upon inter-state commerce in any form."

The case of Wiggins Ferry Company vs. East St. Louis, 107 U. S., 365, has been reviewed in a number of subsequent decisions of this Court, and the Court decided that that decision was based upon the fact that Wiggins Ferry Company was a corporation created by the State of Illinois and therefore a license can properly be exacted from it by a municipal corporation of Illinois.

This distinction was again pointed out in the case of Ficklin vs. Shelby Taxing County, 146 United States, page 23, in which the Court say:

So in Wiggins Ferry Company vs. East St. Louis, 107 U. S., 365-374, where an annual license fee was imposed on the Ferry Company by the City of East St. Louis, *the company having been chartered by the State of Illinois.*

Again, in Pullman Car Co. vs, Pennsylvania, 141 U. S., 23, the Court points out that the basis of this decision is that ships or vessels can only be taxed or licensed at their legal situs, their home port and the domicile of their owners."

And in Pickard vs. Pullman Southern Car Company this Court expressly answers the argument that the case of Wiggins Ferry Company vs. East St. Louis is an exception to the rule contended for as follows: "The decision was that the State had power to impose a license fee upon a ferry keeper living in the State, for boats which he owned and used in conveying from the State passengers and goods across a navigable river to another State; and that the levying of a tax on such boats or the exaction of a license fee in respect of them, by the State in which they had their situs, was not a regulation of commerce within the meaning of the Constitution."

So we see that the case of Wiggins Ferry Company vs. East St. Louis is not in conflict with the authorities cited as sustaining the proposition for which we contend; that the grounds of that decision were that the Wiggins Ferry Company was a corporation of Illinois and that the boats were properly taxable in Illinois, that being their domicile and legal situs.

The decision in the case of Western Union Telegraph Co. vs. Mass., 125, U. S., 530, is no exception to this rule. The tax brought in question in that case was a *property* tax and not a privilege tax; though it was called a tax on the corporate franchise. This Court upheld the tax on the ground that it was in reality a tax on the *property* of the Telegraph Company, situate within the State of Massachusetts, and the subsequent decisions of this Court, in reviewing that case have expressly pointed out this distinction.

* * * * * * *

In Pullman Car Co. vs. Pennsylvania, 141 U. S., 35, reviewing the Massachusetts case, this Court says:

"In that case there was no question as to the situs of the property taxed. The property belonged in Massachusetts and was consequently taxable there. * * * * *

But the difficulty of getting at the true value of the property, within the State, adopting any other rule for ascertaining it, as well as the failure of the Company to show that the rule adopted produced any unfair results, finally induced an acquiescence in the decision; but expressly on the ground that though the tax was nominally on the shares of the capital stock of the Company, it was in effect a tax upon the *property* owned and used by it in Massachusetts."

And again, at page 23: "It is equally well settled that there is nothing in the Constitution and laws of the United States which prevents a State from taxing personal property employed in interstate or foreign commerce, like other personal property within its jurisdiction." Citing Telegraph Co. vs. Massachusetts. See also Western Union Telegraph Co. vs. Alabama, pages 475 and 476. And in Ficklin vs. Shelby County, 145 U. S., 22, the Court cites the Massachusetts case as sustaining the following:

"It has often been laid down that the property of corporations, holding their franchises from the Government of the United States, is not exempt from taxation by the States of its situs."

This construction of the Massachusetts case has also been pointed out in 127 U. S. 426; 127 U. S. 649; and 148 U. S., 102. So that it will be seen at once that the ground of the decision in the Massachusetts case was that the tax was in effect a *property* tax, and when reduced to this proposition it will be of course admitted that the State has a constitutional right to tax the property of the Telegraph Company situate within its borders.

The case of Maine vs. Grand Trunk Railway, 142 U. S., 217, would at first sight appear to be an exception to the doctrine that no State can lay a tax upon interstate commerce in any form, but an examination of the argument of the Attorney General of Maine, page 222, will show that the Maine statute confines the gross receipts to those received within the State, and in this way he differentiates it from the case of State tax on Railway Gross Receipts, and in discussing the case of Fargo vs. Michigan, he says the distinction was, first: that the corporation upon which the tax was levied was not a corporation of the State of Michigan; and second, that the tax was levied upon funds in the Treasury of the Company. The Attorney General says: "Neither of these grounds of distinction obtain in the case at bar."

So that it will be seen that the decision in the case of Maine vs. Grand Trunk Railway was based upon the grounds, first; that the Statute confined the gross receipts to those received within the State of Maine; and second, the Attorney General in his argument admits that the corporation was a domestic corporation of the State of Maine, and therefore properly taxable by that State. In the case of Ashley vs. Ryan, 153 U. S., 436, this Court has clearly pointed out the grounds for the decision in the case of Maine against Grand Trunk Railway Company, "A State in granting a corporation privilege to become one of its own citizens, or what is equivalent thereto, in permitting a foreign corporation to become one of the constituent elements of a consolidated corporation, organized under its laws, may impose such conditions as it deems proper, and that the acceptance of the franchise implies a submission to the conditions, without which the franchise would not have been obtained."

Quoting Maine vs. Grand Trunk Railway Company; see also Pittsburg Railway Company vs. Bachus, 154 U. S., 431.

The case of Ficklin vs. Shelby County, 145 U. S. 1, has been elaborately discussed by Mr. Justice Brewer in Brennan vs. Titusville, 153 U. S., 306. And he there shows conclusively that this case does not and was never intended by the Court to change the interpretation of the Federal Constitution or to extend the right of the State in its interference with interstate commerce. He there points out that that case reaffirmed the proposition "that no State can levy a tax on interstate commerce in any form, whether by way of duties laid on the transportation of the subjects of that commerce or on the receipts derived from that transportation, or on the occupation or business of carrying it on."

The last case cited by the Supreme Court of Mississippi as announcing a contrary doctrine is St. Louis vs. Western Union Telegraph Company, 148 U. S., 92. As far as we have been able to discover, this case has not as yet been cited in any of the subsequent decisions of this Court, but in that case Mr. Justice Brewer expressly states, at page 98, "that this is not a tax upon the property of a corporation or upon its *business, or for the privilege of doing business.*" It is thus disclosed by the very terms of the Section. So that we see that this case has no bearing upon the question under investigation, for the Court has expressly decided that it is not a tax for the privilege of doing business, but merely a charge for rental.

This examination of the cases relied upon by the Supreme Court of Mississippi shows that this Court has in part overruled the decision in the case of State Tax on Railway Gross

Receipts, 15th Wallace, 284, and has wholly overruled Osborne vs. Mobile. That in Wiggins Ferry Company vs. East St. Louis, the tax was upheld on the ground that the corporation was a creature of the State of Illinois, and the boats had their situs within the State. That the tax in Western Union Tel. Co. vs. Massachusetts, was a tax on the property of the company within the State of Massachusetts. That in Maine vs. Grand Trunk Railway Co., the tax was upheld, first, because the receipts were limited to those received within the State of Maine, and second, that the company, in consolidating with the domestic corporation of the State of Maine, can be legally forced to comply with the conditions imposed by that State. Fickling vs. Shelby County has been shown by this Court itself not to conflict with its previously announced opinions, and St. Louis vs. Western Union Telegraph Company was declared to be a case of tax for rental, and not for the privilege of doing business. So that we submit, that the difficulty found by the Supreme Court of Mississippi was more apparent than real, and that a more careful consideration by them of the cases cited would have shown the distinction which has always been recognized by this Court.

The fallacy of the decision of the Supreme Court of Mississippi lies in the fact that they have decided that the State of Mississippi can impose upon foreign corporations engaged in inter-state commerce the same restrictions and obligations which are imposed upon domestic corporations, for at folio 24 we find: "This is a case of a foreign corporation admitted to the use and enjoyment of its corporate franchises in our State upon terms of perfect equality with all others. It is freely permitted to engage in the vast and various employments connected with its business."

* * * * * *

"In return the State claims the right to treat it as it treats similar corporations chartered by her own authority. She asserts her authority to tax the exercise of her franchises in her midst as she does all others, domestic as well as foreign corporations. The State may tax its property as it does all other property of person or corporation within her limits. She may tax the exercise of its franchises within her borders and under the sheltering protection of her laws and government, and no foreign corporation may arrogantly assume any superiority over her domestic corporations."

No principle has been more clearly laid down by the decisions of this Court than that no State can impose a burden or regulation under any form whatever upon a foreign corporation

engaged in inter-state commerce. It has been expressly decided that a foreign corporation has no inherent right to carry on its business and exercise its franchise within territory of another State without complying with the regulations of that State, the only exception to this principle being in the case of foreign corporations engaged in inter-state commerce. The Supreme Court of Mississippi has entirely overlooked this broad distinction. The principles above quoted are good law in reference to all foreign corporations not engaged in inter-state commerce, but as to such foreign corporations as are engaged in inter-state commerce, the State of Mississippi is prohibited from taxing their franchise or imposing upon them a tax for the privilege of transacting their business within her borders.

In Pensacola Telegraph Co. vs. Western Union Tel. Co., 96 U. S., 1, this principle has been recognized in the opinion of the Court delivered by Chief Justice Waite as follows:

"We are aware that, in Paul vs. Virginia, (8 Wall., 168,) this Court decided that a State might exclude a corporation of another State from its jurisdiction, and that corporations are not within the clause of the Constitution, which declares that "the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States. That was not, however, the case of a corporation engaged in inter-state commerce; and enough was said by the Court to show that, if it had been, very different questions would have been presented."

Pembina Mining Co. vs. Pennsylvania, 125 U. S., 181:

"The only limitation upon this power of the State to exclude a foreign corporation from doing business within its limits, or hiring officers for that purpose, or to exact conditions for allowing the corporation to do business or hire offices there, arises where the corporation is in the employ of the Federal Government, or where its business is strictly commerce, inter-state or foreign. The control of such commerce, being in the Federal Government, is not be restricted by State authority."

Crutcher vs. Kentucky, 141 U. S., 59.
Horn Silver Mining Co. vs. New York, 143 U. S., 315.

These decisions are absolutely conflicting with the decision of the Supreme Court of Mississippi as expressed by Mr. Justice Woods.

The only way in which the Supreme Court of Mississippi could sustain the validity of the tax in question, since it was acknowledged to be a privilege tax, was upon the principle that the State of Mississippi was absolutely supreme within her own

territory, and that she could exact any conditions from any and all corporations seeking to do business within the State. For the Postal Telegraph Cable Company being admittedly a foreign corporation engaged in inter-state commerce, the Court could not sustain the validity of this tax upon the Telegraph Company upon any other theory, but, as we have seen, this Court has frequently decided that one State cannot impose conditions upon a foreign corporation engaged in inter-state commerce for the privilege of exercising its franchise within its borders. This is a right which belongs solely to Congress, and in the absence of legislation on the part of Congress, it is an implied declaration that such business shall be free from interference on the part of any State. For, as has been said by one of the Justices of this Court, if the various States of the Union were to be allowed to impose their different restrictions upon foreign corporations engaged in inter-state commerce for the privilege of exercising their franchise, such confusion would ensue as might seriously endanger the harmony of the Union.

At Folios 21 and 24 the Mississippi Court has laid great stress upon the fact that the tax in question is less than the State of Mississippi might have exacted from a Telegraph Company by a tax upon the property of the Company, and would conclude from this fact that the imposition of this privilege tax is justifiable; but, it is needless to cite to this Court authorities for the position that it is not the amount of the tax in any given question which can decide its validity—it is not the reasonableness of the tax which is a test of its constitutionality, but the question is as to the power of the State to impose any amount whatever. It is admitted that the State of Mississippi can impose a property tax upon the real and personal property of the Company situated within the State of Mississippi, and in fact the State of Mississippi has sought to enforce such a property tax in this very case known as an "*ad valorem* tax;" but the principle for which we are contending and in which principle is involved the right of the Telegraph Company to exist and exercise its franchise conferred upon it by the State of New York and carried on under and by virtue of Section 5263 of the Revised Statute of the United States is, that the State of Mississippi cannot exact from the Company a tax for the privilege of doing business. She can tax the property of the Company; she can tax the gross receipts of the Company received from messages wholly within the State; she can impose a tax upon each private message transmitted between points wholly within the State of Mississippi, but she cannot require of a foreign Telegraph Company engaged in inter-state commerce a license for the privilege of exercising rights conferred upon it by another State.

The Supreme Court has declared that the extent of the burden or hindrance placed upon the operations of a Governmental Agent or upon inter-state commerce is not a test of the validity of the Act. This is a question of the power of a State to levy the tax and not the extent to which that power is exercised.

In Railroad Co. vs. Penniston, 18th Wallace, page 36, it is said, "it is therefore, manifest that exemption of Federal agencies from State taxation is dependent, not only upon the nature of the agents, or upon the mode of their constitution, or upon the fact that they are agents, but upon the effect of the tax; that is, upon the question whether the tax does in truth deprive them of power to serve the government as they were intended to serve it, or does hinder the efficient exercise of their power. A tax upon their property has no such necessary effect. It leaves them free to discharge the duties they have undertaken to perform. A tax upon their operations is a direct obstruction to the exercise of Federal powers."

Granted the power of the State to impose the charge, the extent to which that right shall be imposed rests entirely in the discretion of the Legislation. If the effect of the tax is to impose a restriction upon inter-state commerce or an agent of the United States Government, the tax will be declared unconstitutional even though the amount sought to be exacted is less than might have been imposed under a legitimate system of taxation.

The fact that this tax is imposed in lieu of all other State and County taxes as stated in the opinion of the Supreme Court of Mississippi cannot in any way affect the validity of a tax or its constitutionality. If this tax is valid the State of Mississippi would have the equal right to impose a property tax upon the Company for all its property within the State of Mississippi.

PROPOSITION III.

In making no exception for business done by the Telegraph Company for the Government of the United States both inter-state and intra-state, the Act of the State of Mississippi is ultra vires, unconstitutional and void.

This is a tax upon the entire operations of the Company and necessarily includes all business done by the Telegraph Company both foreign and domestic, and it is admitted in this case that a part of the business of the Telegraph Company consists of messages sent for the Government of the United States, its agents and officers.

The proposition submitted is that as there is no exception in the Act as to Governmental messages, the Act is in effect a tax upon business of the United States Government and a restraint and regulation upon the operations of the officers of the Government in discharge of their Govermental duties. While it is universally recognized that the property of a Governmental agent situate within the State is subject to taxation as all other property within the State, it has been repeatedly declared that no State can impose a burden upon the business or occupation of such agency; it matters not whether such business of said Government agent be intra-state or inter-state, or partly both.

The attorney-general of the United States has frequent occasion to telegraph to the District Attorney within the State of Mississippi on business of the United States Government; such messages are also sent by various other Government officers from points without the State of Mississippi to other officials within the State of Mississippi and this tax prohibits the telegraph company from transacting such messages except upon the payment of the privilege tax herein sued for.

In the case of Telegraph Company vs. Texas, 105 U. S., 464, this question was presented to the Court, and after elaborate argument Chief Justice Waite delivering the opinion of the Court says:

"The Western Union Telegraph Company having accepted the restrictions and obligations of this provision by Congress, occupies in Texas the position of an instrument of foreign and inter-state commerce and of a Governmental agent for the transmission of messages on public business. Its property in the State is subject to taxation the same as other property, and it may undoubtedly be taxed in a proper way on account of its occupation and its business. The precise question now presented is whether the power to tax its occupation can be exercised by placing a specific tax on each message sent out of the State or sent by public officers on the business of the United States."

"The present case, as it seems to us, comes within this principle. The tax is the same on every message sent, and because it is sent without regard to the distance carried or the price charged. It is in no respect proportioned according to the business done. If the message is sent the tax must be paid, and the amount determined solely by the class to which it belongs. If it is full rate the tax is one cent, and if less than full rate one-half cent."

"Clearly if a fixed tax for every two thousand pounds of freight carried is a tax on the freight, or for every measured ton of a vessel a tax on tonnage, or for every passenger carried a tax on the passenger, or for the sale of goods a tax on the goods, this must be a tax on the messages. As such so far as it operates on private messages sent out of the State it is a regulation of foreign and inter-state commerce and beyond the power of the State. That is fully established by the cases already cited. As to the Government messages it is a tax by the State on the means employed by the Government of the United States to execute its constitutional powers, and therefore void. It was so decided in McCulloch vs. Maryland, 4th Wheat, 316, and has never been doubted since."

An examination of the facts in the case of Telegraph Company against Texas will show that the Supreme Court by unanimous judgment, has held that so far as the carrying on of the business of a Telegraph Company as a Governmental agent, no State can impose any burden upon this, except to require that its property shall be subject to taxation like other property. No distinction has ever been drawn by the Court between Government business, inter or intra-state, and a moment's reflection will show that this is necessarily so. The intra-state business of the United States Government is as equally important to the proper discharge of its functions as the inter-state. The Telegraph Company under the provisions of Section 5263 of the Revised Statutes, is as much bound to carry and transmit the intra-state Government business as the inter-state Government business, for if it were otherwise it would be in the power of the Telegraph Company to refuse to accept the rate fixed annually by the Postmaster General for Government business, except where the same was inter-state.

The Court has also decided that if there is any possible means provided by the Act by which the Governmental business of the Company may be ascertained, the Act will be upheld as constitutional so far as the intra-state business, which is not Governmental, is concerned, but in the Act before the Court no such means are provided: it is a single tax upon the entire operations of the Company at a specific sum, and necessarily falls as a burden upon every message transmitted by the Company, both commercial and governmental.

It is no answer to this argument to say, as is said by the Supreme Court of Mississippi, that this tax is less in amount than that which could have been recovered from the Company by a property tax, or that the effect upon Government messages is

inconsiderable. This Court, in McCall vs. California, 136 U. S., 111, has decided that the amount of the tax or the essentiality of the business to the existence of the Company is not the test of the validity of the Act, but the true test is the effect of the Act.

Testing this Act, then, by the effect of its operations, which the Court has declared to be the true test, what do we find? If the Court has the right to levy the tax in question, then it has the right to increase the amount of that tax to such an extent as to prohibit altogether the Telegraph Company from doing business within the State of Mississippi, thus denying to it the right of transmitting messages for the Government of the United States, which it is bound to do under Section 5,263 of the Revised Statutes.

A property tax can have no such effect, for a property tax is governed by the Constitution of the State of Mississippi, and all property of the Telegraph Company must be assessed and taxed in the same proportion as all other property within the State is assessed and taxed, and therefore, the Company being subject to the same burdens as imposed upon all other property in the State, it is protected from practical confiscation, but to a tax on the franchise or privilege of doing business, no limit has been prescribed by the Constitution of the State of Mississippi. Any arbitrary sum which the Legislature may see fit to impose can be legally done, and it was this very fact which induced the framers of the National Constitution to deny to the States the right to tax interstate commerce or Government business, so effectually depriving them of any power to prohibit a Company engaged in interstate commerce, or as an agent of the Government, from transacting its business within the State.

A practical illustration of the application of this principle is to be found in the facts connected with the case of the Postal Telegraph Cable Company vs. City Council of Charleston, reported in 56 Federal Reporter, page 419. The Ordinance of 1890 of the City Council of Charleston imposed a license tax of $500 upon all Telegraph Companies, without using the words of exclusion either as to interstate commerce or governmental agencies. The State Circuit Court held this Ordinance unconstitutional. The next year the Ordinance read: "Not including any business done to or from points without the State." This was also held unconstitutional, and in the Ordinance of 1892 the provision was as follows: "Telegraph Companies or agencies each, for business done exclusively within the City of Charleston, and not including any business done to or from points without the State, and not including any business done for the Government of the United States, its officers or agents."

Judge Simonton held this Ordinance to be constitutional, as it had excluded from its operation interstate business and Governmental business, which decision has since been affirmed by this Court, in 153 U. S., page 692. In his opinion, Judge Simonton says:

"The draftsman of this Ordinance knew, however, that the business done by these Companies between points without this State and the City of Charleston was protected from taxation by the interstate commerce law." (W. U. Tel Co. vs. Texas, 105 U. S., 460); and that in all business done for the Government, its agent was protected from taxation. (W. U. Tel. Co. vs. Alabama State Board of Assessment, 132 U. S., 473. So this part of the Ordinance carefully excludes any such attempt, "not including any business done to or from points without the State, and not including any business done for the Government of the United States, its officers or agents."

This principle has also been recognized in the case of the Western Union Telegraph Company vs. Alabama, 132 U. S., 473, and in this connection we would also call attention to the case of Exparte Conway . . Federal Reporter, page . . where the same Judge Simonton properly went to the extent of holding that a Telegraph Company, being an agent of the Government, a foreman of the Company, its servant, engaged in the construction of a telegraph line upon the highways of the State of South Carolina, could not be arrested under the provisions of a State Statute for obstructing the highway, but that he was an officer of the Federal Government in the discharge of his duties as such and subject solely to its control, and under the authority of Exparte Neagle, 135 U. S., page 1, Conway was taken on *habeas corpus* from the custody of the State Court and his case tried and the defendant dismissed upon the ground that the protection of the Federal Court would be extended to him in the same way in which it is extended to the Telegraph Company, its employer."

In view of the fact that the decision of the Supreme Court of Mississippi presents to this Court for consideration all the essential questions necessary for its determination, we have decided not to press the thirty-first assignment of error in reference to this case having been improperly remanded to the Circuit Court of Hinds County, and, therefore, will not encumber this Brief with an argument on that subject.

All of which is respectfully submitted.

T. MOULTRIE MORDECAI,
PHILIP H. GADSDEN,
Attorneys for Plaintiff in Error.

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IN THE

SUPREME COURT OF THE UNITED STATES.

NO. 649.

THE POSTAL TELEGRAPH CABEL COMPANY,

PLAINTIFF IN ERROR,

vs.

WIRT ADAMS, REVENUE AGENT OF MISSISSIPPI,

DEFENDANT IN ERROR.

MARCELLUS GREEN,
for Deft. in Error.

IN THE

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NO. 649.

THE POSTAL TELEGRAPH CABEL COMPANY,

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vs.

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DEFENDANT IN ERROR.

ABSTRACT OF FACTS BY APPELLEE.

By an Act of the Legislature of the State of Mississippi, approved March 8th, 1888, amending the Revenue Chapter of the Code of 1880, there was levied a tax of $3,000.00 on each Telegraph Company operating within the State, one thousand miles or more of wire; and on each Telegraph Company operating less than one thousand miles of wire a tax of *one dollar per mile was levied, and under the law the tax thus levied was in lieu of all other State, county and municipal taxes.* See pp. 40 to 49, Record.

During the fiscal years 1880 and 1791 the Postal

Telegraph Cabel Company, a corporation chartered under the laws of the State of New York, and operated within the State of Mississippi, 391 28-100 miles of wire. The telegraph lines and the equipments and property pertaining thereto, owned and operated by said Company within the limits of the State and within the limits of the eighteen several counties thereof named in the declaration on page five of the record, were, during said years 1890 and 1891, worth and valued at the sum of forty one thousand, nine hundred and sixty-seven dollars and fifty-four cents.

The tax levied on the plaintiff in error by the law of March 8th, 1888, under the name of privilege-tax, per annum, was one dollar per mile, or the sum of $391 28-100, making an aggregate of $782 56-100 for the two years 1890 and 1891.

This sum was under the law *in lieu of all other State, county, aad municipal taxes.* Under the general revenue laws of the State of Mississippi the ad valorem taxes on the said property of said Company for said two years 1890 and 1891, would have been $1188.56 for *State and county purposes only*, if the property of the Telegraph Company had been assessed and the State and county taxes levied, under said general revenue laws, in the several counties where the property was located. See Record, page 7.

This sum of $1188.56 does not include what *could have been assessed* and collected by municipalities in the way of advalorem taxes for municipal purposes on property owned and operated by plaintiff in error

in the various towns and cities of the State, but for the restriction in the statute of 1888 making the tax there levied to be in lieu of all other taxes.

For the years 1890 and 1891 the Postal Telegraph Company paid no taxes, neither State, county, municipal nor privilege; but failed and refused to pay.

On August 16th, 1892, the State Revenue Agent of Mississippi brought suit against said Company for the taxes of said years.

The first count in the declaration is for the privilege tax, and the second count is for the advalorem taxes in the several counties levied for State and county purposes. The suit is thus brought on the idea and theory that if the privilege tax is void and unconstitutional, then the Company is liable for ad valorem taxes on their property; and the contrary, if the tax levied under the law of 1888 is valid and binding. The State courts held the so called privilege tax constitutional and valid and that is was in lieu of all other taxes, and the demurrer to the second count was therefore sustained and that count dismissed.

Before pleading in the case the defendant Company petitioned the State circuit court to remove the cause to the United States circuit court for the Southern district of Mississippi, and an order of removal was duly made. (See page 15 of Record.)

The cause was accordingly removed to the United States circuit court, when, on motion of the plaintiff it was remanded to the State court for trial. (See page 17 of Record.)

When the cause came back to the State court the defendant company demurred to the second count, and pleaded to the first count of the declaration. The demurrer to the second count was sustained by the State circuit court and that count dismissed. The plaintiff, Revenue Agent, demurred to the special pleas filed by the defendant company, and this demurrer was also sustained, and on its refusal to plead further there was judgment against the Telegraph Cable Company for the amount of the privilege taxes for the years 1890 and 1891, with interest, cost, etc.

From the judgment of the circuit court, on appeal, was taken to the supreme court of Mississippi, and the judgment of the circuit court was affirmed. There being a Federal constitutional question involved, the proper proceedings were had, and appeal taken to the United States Supreme Court.

The substance of the plea of the Postal Telegraph Cable Company to the first count of the declaration is as follows:

The company was duly incorporated and organized under the laws of the State of New York, and during the years 1890, 1891 and 1892, respectively was engaged in carrying on the business of telegraph company, having offices in various counties, cities and towns of the State of Mississippi for the purpose of receiving and sending telegraph messages, and operating certain lines of telegraph on various post-roads and railroads extending across and leading into and from the State of Mississippi to the State of Alabama

and other points in other States of the United States, and in the Dominion of Canada. That by its charter said Company is authorized to construct, maintain and operate lines of telegraph in and between the various States of the Union, including Mississippi. That the Postal Telegraph Company was and is the lessee of the Atlantic Postal Telegraph Cable Company, and was in 1890 and 1891 engaged in the general public telegraph business of transmitting messages for commercial and governmental purposes by, and over its lines within, from, through and across the State of Mississippi and many other States and territories of the Union, and has offices for receiving and sending messages by telegraph in every State and territory where its lines extend. That it is engaged in sending and receiving messages to and from points within the State of Mississippi to and from points without, also from points wholly within to points wholly within said State of Mississippi.

That on the 6th of March, 1886, said company filed its written acceptance, with the Post-Master General of the United States, of the restrictions and obligations of an Act of Congress entitled, "An Act to aid the construction of Telegraph Lines, etc., approved July 24, 1866, and in pursuance thereof the Post-Master-General designated it as one of the Telegraph companies that must transmit messages for the United States Government at a price and rate fixed by him, and said designation is still in force, and said Postal Telegraph Cable Company is a government agent sending messages for the government between its officers

not only from points within to points without, but also to and from points wholly within to and from points wholly within the State of Mississippi.

That said Postal Telegraph Cable Company is and was in 1890 and 1891 engaged in transmitting messages from one State of the Union to another, and was therefore engaged in interstate commerce.

That by said Act of the Legislature of the State of Mississippi the attempt is made to assess a tsx upon the property and business of said Telegraph Cable Company for public purposes at a greater rate than is assessed on property of individuals in the State of Mississippi, and such assessment is not according to the valuation of said property, and is at a much greater rate of taxation than other monied capital or property employed in commercial business, is taxed or assessed. That said taxes are unequally imposed.

Therefore, they say: 1st. That said Act of the Legislature is in contravention and violation of section 5263 of the Revised Statutes of the United States. 2d. It is in violation of section VIII, Article I, of the Constitution of the United States. 3d. It violates the 5th and 14th amendments to the United States constitution. 4th. It violates section 112 of the constitution of Mississippi.

6th. The tax imposed by said Act of the Mississippi Legislature is a restraint on the use of the post-roads of the United States Government, and interferes with a governmental agency.

7th. It is a restraint upon trade and interstate com-

merce, and is against the public policy both of the State of Mississippi and of the United States.

We have not had the privilege of seeing or examining the abstract of facts made by the plaintiff in error, and therefore submit, respectfully, the foregoing as the facts in the cause.

MARCELLUS GREEN,
for Wirt Adams, State Revenue Agent.

IN THE SUPREME COURT OF THE UNITED STATES.

POSTAL TELEGRAPH CABLE COMPANY,
vs.
WIRT ADAMS, STATE REVENUE AGENT. } No. 649.

BRIEF FOR DEFENDANT IN ERROR.

The validity of the Act of March 6th, 1888, with reference to the Constitution of Mississippi, was settled by the opinion of the State supreme court in this case, in which opinion the law and the tax levied thereunder are upheld.

There is nothing in the law violative of any provision of the State constitution, and this court will follow the State court, and uphold the law and the tax levied thereunder, unless some provision either of the Federal constitution or of the United States laws is violated.

See: *P. & St. L. Ry. Co. vs. Backus*, Sup. Cr't Reporter, Vol. 14, No. 37, p. 1117—July 23, 1894.

NO PROVISION OF UNITED STATES CONSTITUTION OR LAWS VIOLATED.

The Mississippi law called in question by this proceeding, imposes no unconstitutional burden upon interstate commerce as carried on by the Postal Telegraph Cable Company, nor does the tax levied under said law illegally interfere with said company as a governmental agent.

The court will observe that the law in question imposes the tax, for which judgment has been obtained in this suit, *in lieu of all other taxes of* every kind in the State of Mississippi.

No county, municipal, nor State authority can impose on a Telegraph company any tax of any kind in addition to that levied by the law itself.

When a Telegraph company owns and operates less than one thousand miles of wire, as is the case with plaintiff in error, a tax of one dollar per mile is levied. The Legislature of the State adopted this method of levying what is deemed a just and equitable tax on Telegraph companies.

In the case of *Maine vs. Grand Trunk Railway Company*, 142 U. S. Reports, p. 227, the court sustains the right of a State to levy a tax like the one imposed by the Mississippi law of 1888. This court says in that case: "The privilege of exercising the franchises of a corporation within a State is generally one of value, and often of great value, and the subject of contention.

It is natural, therefore, that the corporation should

be made to bear some portion of the burdens of the Government. As the granting of the privilege rests entirely in the discretion of the State, *whether* the *corporation* be of domestic or foreign origin, it may be conferred upon such conditions, pecuniary or otherwise, as the State in its judgment may deem most conducive to its interest or policy. It may require the payment into its treasury, each year, a specific sum, or may apportion the amount exacted according to the amount of business permitted, and its value as disclosed by its receipts or gains of the present or past years. The character of the tax, or its validity, is not determined by the mode adopted in fixing its amount for any specific period, or the times of its payment."

In the Maine law, resort was had to the receipts and gains of the railroad company to ascertain the value of its franchise and to determine the reasonable tax to be imposed. The court in the above case held an excise tax imposed on that basis to be valid, and that the imposition of such a tax is not a regulation of the commerce of the road. Se also following authorities:

Home Ins. Co. vs. N. Y., 134 U. S. Reports, 594.

Moore vs. City of Eufaula, 11 South. Reporter, p. 921.

Horn vs. Silver Mining Co., 143 U. S. Rep., 305.

11 *Supreme Court Reports*, 403.

Ficklen vs. Taxing Dist., 145 U. S., p. 1.

Postal Tel. Cab. Co. vs. Charleston, Sup. Court Reporter, Vol. 14, p. 1094.

There must be a direct tax upon the exports and

imports from one State to another before there is any interference with interstate commerce. In all the authorities where the courts have held taxation by the State unconstitutional, there has been a direct tax on commerce itself; either on the thing transported or on the receipts and gains arising from the transportation. Taxation of the imports or exports of interstate commerce itself is the underlying principle of all the decisions, where the law imposing the tax had been held unconstitutional.

The franchise of a corporation, the right or privilege of being a corporation, separate and distinct from the material property, which the corporation may acquire in the course of its business transactions, is itself property. In most of the States this franchise is considered personal property and is subject to taxation. This taxable franchise is composed of two elements, either of which may be taxed by a State:

First, the privilege, actually enjoyed, of exercising certain powers under a charter; second, the right to exist in corporate form without reference to the powers that, under such form, the company may exercise.

This right of taxation by the State is not impaired nor abridged because the corporation is, under the authority of a State, engaged in interstate commerce.

A tax levied by a State, granting the charter, on both these elements of franchise, is not in conflict with the interstate commerce clause of the Federal constitution. Nor is a tax levied by a State, where the charter was not granted but where the corporation is ex-

ercising the powers granted by another State, to-wit: on the first element of franchise above mentioned, in conflict with the provisions of the Federal Constitution relating to interstate commerce.

Such a tax and the law imposing it is unconstitutional only when it discriminates against rights held in another State, or the tax is levied on imports, exports, tonnage, transportation or sending of messages to other States.

See: *Lumberville Del. Bridge Co. vs. Board of Assessors*, 26th Atlantic Reporter, p. 711.

The fact that interstate commerce is incidentally affected will not invalidate a State law levying a tax on franchises of a corporation.

See: 107 U. S. Rep., 365; 142 U. S. Rep., p. 218; 95 U. S. Rep., p. 80; 100 U. S. Rep., 428; 125 U. S. Rep., p. 530; 141 U. S. Rep., p. 18; 18 Wallace Rep., p. 206; 143 U. S. Rep., p. 305; 145 U. S. Rep., p. 1; Paul vs. Virginia, 8 Wallace Rep., p. 168.

The case of *Leloup vs. Port of Mobile*, 127 U. S. Rep., p. 640, is relied on by appellant to sustain their position, but this case has been, in effect, overruled by the opinions in the case of Maine vs. Grand Trunk Railway, 142 U. S. Rep., p. 217.

In the last named case the minority of the court in their dissenting opinion urge the Leloup case as authority against the opinion of the majority, but the majority in their opinion say that no case had ever been decided, which announced a doctrine in conflict with their opinion then being delivered.

The Supreme Court of Alabama in the case of Moore vs. Eufaula, 11th Southern Reporter, page 921, held that a tax similar to the one involved in this suit was valid. The defence in that case was exactly the same made in the Leloup case.

The law was upheld, however, and the cases cited as authority were Grand Trunk, adv. Maine 142 U. S. Rep.; Western Union Telegraph Co. vs. State; 105 U. S., p. 460; and Fricklen vs. Taxing District, 12 Supr. Court Reporter, p. 810.

The Mississippi law imposes no tax on messages nor on the fees charged by the company for sending messages, whether the messages are sent from one State to another or as an agent of the United States Government. The Postal Telegraph Cable Company, like all other Telegraph companies doing business in the State and operating less than a thousand miles of wire, is required to pay one dollar per mile of its line. This tax is in lieu of all other taxes. This sort of a tax certainly cannot be said to be a tax on the interstate commerce carried on by the company any more than an ad valorem tax on all the property of the company located in the State would be a tax on its commerce. The plaintiff in error cannot be heard to complain, because the tax levied under the law of 1888 is less than it would have had to pay if its property had been assessed and an ad valorem tax levied under the general assessment laws of the State. The tax imposed by the State of Mississippi on plaintiff in error is right and proper, and does not burden it with more

than its equitable share of the taxes necessary to support the State government.

MARCELLUS GREEN,
for Deft. in Error.